

EXHIBIT

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STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. EDS 4902-08

_____	:	
R.M. AND B.M. O/B/O H.M.,	:	
	:	
Petitioner,	:	
	:	TRANSCRIPT
-vs-	:	OF
	:	RECORDED PROCEEDINGS
HADDON HEIGHTS BOARD OF	:	
EDUCATION,	:	
	:	
Respondent.	:	
_____	:	

December 8, 2008

BEFORE:

THE HONORABLE JOSEPH F. MARTONE, A.L.J.

APPEARANCES:

REISMAN CAROLLA, LLP
By: Catherine Merino Reisman, Esq.
Attorney(s) for Petitioner

CAPEHART & SCATCHARD, P.A.
By: Joseph Betley, Esq.
Attorney(s) for Respondent

CRT SUPPORT CORPORATION
Transcriber: Kelly Sellers

I N D E X

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WITNESSDIRECTCROSSREDIRECTRECROSS

BARBARA WILLIAMS

By Mr. Bentley

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By Ms. Reisman

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JAYNE ELFRETH

By Mr. Bentley

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By Ms. Reisman

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GEORGE RAFFERTY

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1 THE COURT: All right. Good morning. We're
2 now on the record. My name is Joseph F. Martone. I'm
3 an Administrative Law Judge assigned by the Office of
4 Administrative Law to hear this matter. This is a case
5 entitled R.M. and B.M. o/b/o H.M. v. Haddon Heights
6 Board of Education. This has an OAL docket number EDS
7 4902-08 and agency reference number 2008-13674.

8 May I have your appearances for the record,
9 please?

10 MR. BENTLEY: Good morning, Judge. Joseph
11 Bentley of -- representing Haddon Heights Board of
12 Education.

13 THE COURT: Thank you, Mr. Bentley.

14 MS. REISMAN: Katherine -- Reisman of Reisman
15 Corolla, LLP representing petitioners.

16 THE COURT: Thank you, ma'am, Ms. Reisman.
17 Let me state that the Office of Administrative Law is
18 an independent state agency. Our function is to hear
19 and decide matters such as this in a fair and impartial
20 manner. We are neither employed by nor are we
21 associated with the Haddon Heights Board of Education
22 or any of the parties to this proceeding.

23 The only other announcement I'll make is that
24 I -- the first day of hearing I entered an oral order
25 to the effect that I will redact -- or ordering,

Colloquy

5

1 rather, that if there's ever a transcript made of this
2 proceeding that transcript will be redacted or amended
3 to reflect the parents' and child's name by initials
4 only.

5 All right. So with that, Mr. Bentley, is
6 there any other housekeeping matters we need to deal --
7 no.

8 MR. BENTLEY: No.

9 THE COURT: Okay. Mr. Bentley, if you --

10 MR. BENTLEY: I'd like to call Dr. Barbara
11 Williams to the stand, please.

12 ~~THE COURT: Dr. Williams, good morning.~~

13 THE WITNESS: Good morning.

14 THE COURT: Will you please come to the
15 witness stand? If I -- if I can ask that you remain
16 standing and raise your right hand to be sworn?

17 B A R B A R A W I L L I A M S, RESPONDENT'S WITNESS,
18 SWORN.

19 THE COURT: You may be seated. Give me your
20 full name, please.

21 THE WITNESS: Barbara Boll (phonetic)
22 Williams.

23 THE COURT: All right, Dr. Williams.
24 Counsel, you may proceed.

25 MR. BENTLEY: Thank you, Judge.

1 DIRECT EXAMINATION BY MR. BENTLEY:

2 Q Good morning, Dr. Williams.

3 A Good morning.

4 Q What is your current position?

5 A I'm an associate professor in the Special
6 Education Department of Rowan University.

7 Q Previously Glassboro?

8 A Previously Glassboro State College.

9 Q Okay.

10 A Now Rowan University. Yes.

11 Q Okay. Tell us a little bit more about what
12 ~~your role is as an associate professor at Rowan.~~

13 A Okay. I -- I coordinate the school psychology
14 program so that I work with graduate students who are -
15 - I teach them, coordinate and advise them, who are
16 seeking to become school psychologists.

17 Q And do you also teach classes?

18 A I do. I teach classes in educational assessment,
19 psychological evaluations. I coordinate the --

20 Q Okay. Slow down a little bit.

21 A Okay.

22 Q I don't think Judge Martone's --

23 A Okay.

24 Q -- shorthand is that good.

25 A Okay.

Williams - Direct

7

1 Q (Laughing.)

2 THE COURT: Not at all.

3 MR. BENTLEY: (Laughing.)

4 THE WITNESS: (Laughing.) Sure. I do teach

5 -- I have taught classes in educational assessment.

6 I'm currently teaching classes in psychological --

7 psychological assessment, the part of the -- the --

8 teaching students how to do complete psychological

9 assessments as well as consultation and interventions

10 and I supervise the internship which is the 1,200 hour,

11 year long experience that students have to go through

12 to become school psychologists.

13 BY MR. BENTLEY:

14 Q And these are graduate students?

15 A All graduate students.

16 Q Okay.

17 A Yes.

18 Q And how long have you held this position at
19 Rowan?

20 A This is my eighth year.

21 Q Now since you started at Rowan have you held
22 the same titles and had the same duties --

23 A (Coughing.)

24 Q -- or -- eight years?

25 A Well I had a promotion from an assistant to an

1 associate and I'm currently applying to be promoted to
2 a full professor. It's a matter of time and
3 experience.

4 Q Are you tenured?

5 A Oh, yes.

6 Q Now what is -- tell us about your state
7 certifications.

8 A Okay. I'm certified as a school psychologist. I
9 began my career, my undergraduate degree was in -- as a
10 teacher. I'm certified as a teacher in New Jersey.
11 And then have graduate work in -- as a counselor and as
12 a school psychologist, as an administrator, so I've
13 done a lot of things prior to going to Rowan.

14 Q Now your duties at Rowan, are you involved in
15 any way in -- in teaching or -- or providing guidance
16 for these graduate students in terms of determining
17 eligibility for special education?

18 A Sure. Yeah. As part of the assessment process
19 when you're -- you're teaching students how to gather
20 data, to evaluate youngsters and then of course the
21 next step would be -- and -- and what do we do with
22 that, what -- what and what is the decision making
23 process that you would use in order to make a
24 determination of whether a child would be eligible for
25 special education or whether they would be not eligible

1 for -- not eligible for special education.

2 Q And have you been involved in that aspect of
3 it for over the past eight years at Rowan?

4 A Yes, I have.

5 Q Okay. Tell us about your education.

6 A Okay. I have an undergraduate degree in education
7 and from Muskingum College and --

8 Q What college?

9 A Muskingum College which is a smaller college in
10 Ohio. And then I taught for a very short time but then
11 went back to graduate school. So I have then first
12 ~~initially a certification in school psychology and~~
13 counseling and then I have my Ph.D. in educational
14 psychology from Temple. And I actually have a post-
15 doctoral specialty in clinical psychology.

16 Q Your --

17 THE COURT: So your Ph.D. was in educational
18 --

19 THE WITNESS: Yes. Psychology.

20 THE COURT: Psychology. Oh.

21 BY MR. BENTLEY:

22 Q Were -- dissertation?

23 A My dissertation was -- the title was "Learned
24 Helplessness, Explanation of Children's Reaction to
25 Divorce" in 1989.

1 Q You said 1989? That was from Temple, you
2 said?

3 A Yes, it was.

4 Q Your -- your graduate degree, you said you
5 had a masters?

6 A Yes. I have two masters degrees.

7 Q Okay.

8 A Yeah. A masters degree in educational psychology
9 and one in counseling psychology prior to the
10 certification as a school psychologist.

11 Q And where were those --

12 A ~~They -- they were from Glassboro.~~

13 Q Glassboro as well.

14 A Yeah. Yeah. Then I went to Temple.

15 Q Okay. Tell us about prior to becoming a
16 professor at Rowan. Tell us about your employment
17 experience.

18 A Okay. I worked as -- initially was working part-
19 time as a school psychologist and then that position
20 grew into more than full-time. It went from being a --

21 Q At what school?

22 A Audubon Public Schools. I was --

23 Q In Camden County?

24 A Yes.

25 Q Okay.

1 A I was there for 25 years until the opportunity
2 came along to move into higher education. So I
3 functioned as a school psychologist and then for many
4 of those years, I want to say all but three or four of
5 those years, about 21 years I was also the director of
6 special education. But I also -- I continued to
7 function as a school psychologist to have the direct
8 contact with kids.

9 Q Okay. And in your capacity as a school
10 psychologist and as a director were you involved in
11 determinations of eligibility -- special education?

12 A ~~Yes, but actually only as a school psychologist~~
13 because it's really the team, the child study team that
14 has along with the parent, the teachers that makes the
15 recommendation or arrives at the -- the decision in
16 terms of eligibility.

17 Q But in your role as a director have you had
18 the opportunity to supervise teams in --

19 A Yes. Yes.

20 Q For -- for how many years and about how many
21 evaluations -- eligibility?

22 A Oh, wow. That's a hard question. I would say for
23 about 22 of those years I was working as a director and
24 I -- it would be very hard to estimate how many
25 decisions there would be. Perhaps, I don't know, 65,

1 70 a year. You know, I'm -- I'm estimating.

2 Q Okay.

3 A So over that 25 years I was --

4 Q Now in your capacity as the -- a professor at
5 Rowan in -- the program there --

6 A Right.

7 Q Were you involved in helping the students in
8 terms of, especially interns --

9 A Right.

10 Q -- in determination decisions?

11 A Yes.

12 Q Okay. In what capacity?

13 A Well we have a seminar which is called Colloquium
14 which students come to once --

15 Q What is it --

16 A It's called Colloquium in School Psychology. So
17 while students are out in the field working in
18 respective districts throughout, you know, throughout
19 the area, then we come together at least once a month
20 and one of the topics that we discuss is, you know,
21 what are the kind of things that you-re -- situations
22 that you're encountering that would be -- that would --
23 we could discuss, of course, you know, just without
24 names, anonymously, that would be helpful to you as
25 well as the individual opportunity for supervision so

1 that there -- the students that I actually supervised
2 in the field where I go to visit them at their schools,
3 because there's other people -- there's another
4 professor who works with me with this.

5 But when I visit them that's frequently what we
6 talk about because I go out and say, you know, "What
7 are some of the issues facing you? How can I help
8 you?" And we often talk about, you know that -- the
9 eligibility issues.

10 Q Okay. Now you're -- in addition to your
11 duties at Rowan, are you still involved in -- in doing
12 ~~evaluations for school districts?~~

13 A I am. Yes, yeah. I continue to work for
14 Educational Services Commission where they provide
15 services to non-public schools so that I'm working in a
16 parochial school at this point as on an as needed
17 basis, but working as a child study team member.

18 THE COURT: What is the name? Educational?

19 THE WITNESS: Educate -- Camden County
20 Educational Services Commission.

21 THE COURT: Okay.

22 THE WITNESS: So I'm currently at Christ the
23 King School in Haddonfield.

24 BY MR. BENTLEY:

25 Q So they -- they -- the Commission, the

1 Educational Services Commission provides services --

2 A Yes.

3 Q -- to who? I -- I don't want to lead you.

4 A Okay. Okay. Through -- through -- also through
5 federal funding that there are services provided to
6 children in -- who attend non-public schools. So that
7 in Camden County, it's done differently in each county
8 or can be done, but in Camden County there is a
9 commission --

10 Q Right.

11 A -- which then is funded through public money to
12 ~~provided services to children who attend parochial~~
13 schools.

14 Q And you're involved in that -- that --

15 A I am.

16 Q In that process? In what capacity?

17 A As a school psychologist. So I do the --

18 Q Doing evaluations?

19 A Yes. And determining eligibility.

20 Q Okay.

21 A Yeah.

22 Q And how long have you worked with the Camden
23 County Educational Services Commission?

24 A I want to say 20 years. Estimate at 20 years.

25 Q Any other duties at -- at the present time in

1 addition to Rowan?

2 A I continue to be a consultant for Voorhees Public
3 Schools and Haddonfield Public Schools when they need
4 me. You know, when there's an opportunity, either a
5 difficult case or just the workload is -- is -- is
6 needed.

7 Q And again in what capacity?

8 A As a school psychologist.

9 Q Okay. You -- you worked your whole life with
10 school districts.

11 A Yes.

12 ~~Q How would you describe yourself in terms of~~
13 your -- your -- your -- your -- any alleged biases or
14 prejudices or anything along those lines?

15 A Well I think that throughout my career what I've
16 attempted to be is, although -- is -- is really to be a
17 child advocate because I think it's important that we
18 have the -- the luxury when we're evaluating children
19 individually to say what is ideal, what would be the --
20 what would be the best situation for this child? You
21 know, we -- we can have an individual prospective. So
22 I'm attempting to say within -- you know, within reason
23 what would be the best situation.

24 Q Okay.

25 A Which is not only the most popular situation or

1 popular recommendation.

2 Q Right. That's why we're here, I assume.

3 A Right. Right.

4 Q In essence. All right. Okay. Did you
5 prepare a -- a C.V.?

6 A Yes.

7 Q I'd like to move the -- Dr. Williams' C.V. in
8 evidence. This is -- do you have a copy?

9 MS. REISMAN: Your Honor --

10 THE COURT: R-30.

11 MR. BENTLEY: I have -- I have --

12 ~~THE COURT: R-33 is my next marking, I~~

13 believe.

14 MR. BENTLEY: R-33 for identification.

15 (R-33 marked for
16 Identification.)

17 BY MR. BENTLEY:

18 Q Dr. Williams, could you take a look at that
19 particular document?

20 A Yes. This was the -- it looks like the -- the
21 C.V. that I provided. Not completely up to date, but
22 basically up to date. Yeah.

23 Q Can you take a -- I don't want you to -- it's
24 a rather lengthy C.V. Just -- if you could just scan
25 to make sure this is the actual C.V. that you provided?

1 A It does. It looks like it. Yes.

2 Q And do you recall when you prepared this?

3 A It would have been in September, I believe.

4 MR. BENTLEY: I'd like to move R-33 in
5 evidence.

6 THE COURT: Any objection or voir dire?

7 MS. REISMAN: No.

8 THE COURT: All right. R-33 in evidence.

9 (R-33 received in
10 Evidence.)

11 MR. BENTLEY: Okay. I'd like to move --
12 ~~present Dr. Williams as a expert witness on the issue~~
13 of eligibility for special education.

14 THE COURT: Any objection?

15 MS. REISMAN: No.

16 THE COURT: Wasn't that one of the functions
17 of a school psychologist? I mean I'm just trying to
18 determine if that's a -- a separate category of
19 expertise.

20 MR. BENTLEY: I believe it is.

21 THE COURT: Eligibility?

22 MR. BENTLEY: Yeah. I mean -- I mean I --
23 there's no separate certifications from the State.

24 THE COURT: Yeah.

25 MR. BENTLEY: She does -- I believe she can

1 give an expert opinion regarding the particular
2 situation here. I think that's -- that's the general
3 area I would like to have her classified as an expert
4 in.

5 THE COURT: Okay. Okay.

6 MR. BENTLEY: You are right. School
7 psychologists are involved in that.

8 THE COURT: Yeah.

9 MR. BENTLEY: That's true.

10 THE COURT: Yeah.

11 MS. REISMAN: And that's why I don't object.

12 ~~She's clearly an expert in the area of school~~
13 psychology and school -- student -- in that decision,
14 although you probably have -- as being an expert in
15 eligibility. She's an expert in school psychology.

16 MR. BENTLEY: Well, I -- move is to have
17 her be an expert on eligibility determinations for
18 special education.

19 THE COURT: All right. I'll accept her as
20 an expert in that field.

21 MR. BENTLEY: Can -- second.

22 THE COURT: Okay.

23 BY MR. BENTLEY:

24 Q Okay. You've never met H.M. before?

25 A No, sir.

1 Q Okay. Tell us what your first involvement
2 was in these proceedings. How did you -- how did you
3 become involved in this -- in this issue?

4 A I got a call from Mr. Rafferty asking me would I
5 consider becoming an expert witness in this case.

6 Q And what was your understanding of your role
7 as an expert witness?

8 A My understanding was to review the record, the
9 child study team -- child study team record and to --
10 in order to determine whether procedures had been
11 followed, whether there had been a comprehensive

12 ~~assessment that would -- that -- and -- and did I see~~
13 there was any problem with the eligibility decision
14 that was made.

15 Q Okay. Are you being compensated by Haddon
16 Heights?

17 A Yes, I am.

18 Q Okay. And what is your -- how are you being
19 compensated?

20 A The amount?

21 Q Whatever -- whatever is the --

22 A An hourly rate.

23 Q -- the transaction. Okay. What -- what
24 rate?

25 A One hundred dollars an hour.

1 Q And is your compensation dependent upon the
2 result of this hearing?

3 A No.

4 Q Did -- I take it you did not do any
5 evaluations of H.M.?

6 A No, I did not.

7 Q Okay. It was strictly a record review?

8 A Absolutely. Yes.

9 Q Any -- anything else you recall being said to
10 you by Mr. Rafferty regarding your -- your -- your --

11 A No, I asked questions. He gave me an idea about,
12 ~~you know, some of the issues, but I think Mr. Rafferty~~
13 really said to me, "I want your honest opinion as to
14 what -- you know, your honest opinion as to this issue
15 of eligibility." So I --

16 Q And did you in fact review E.M.'s educational
17 --

18 A Yes, I did. And I noted that in there was a
19 signed release from the parents that I had permission
20 to do that.

21 Q Okay. Do you recall when you -- strike that.
22 What -- what time period were you looking at in terms
23 of your role of -- determining whether the --

24 A Okay. Well, it's always critical to go back and
25 look at history, look at background. I really focus my

1 efforts and my time looking at the current reevaluation
2 that was done during last school year, the 2007/2008
3 school year.

4 Q Okay.

5 A I did review other information that was in the
6 file, it's a very thick file, just in order to get
7 additional background so I understood the case.

8 Q Okay. Now the -- I think the evidence so far
9 is that there was a decision made in May of 2008.

10 A Right.

11 Q That's why we're here.

12 A Yes.

13 Q Okay.

14 A Yes.

15 Q Did you review any type of documents that
16 were generated or any evaluations that occurred after
17 May of 2008?

18 A No, I didn't.

19 Q So I take it your -- your evaluation was
20 simply looking at what the team had in front of you?
21 Is that -- is that an accurate statement?

22 A Yeah. There were others -- there were other --
23 there was other documents in there, in the file that --
24 there had been an evaluation that was not done by the
25 child study team. I think that the parent had done

1 with -- from St. Joe's University, a reading evaluation
2 that was done. I believe that was in the file.

3 Q Do you remember looking at that file -- at --

4 A Yes.

5 Q -- that document at all?

6 A Yes, I do. Yes, I do.

7 Q Okay. And did you prepare a report based
8 upon your review of those records?

9 A Yes.

10 Q This is going to be R --

11 THE COURT: 34.

12 ~~MR. BENTLEY: R-34?~~

13 THE COURT: Yes.

14 (R-34 marked for
15 Identification.)

16 BY MR. BENTLEY:

17 Q Doctor, I have the report but the copies that
18 I have, I don't have the back page that was signed.

19 MS. REISMAN: That's okay.

20 MR. BENTLEY: Okay. I'm going to give her
21 a copy of the one that was signed. Okay. Let me --
22 let me have that.

23 MS. REISMAN: Yeah. Actually I can't. I
24 can't -- do you have an extra --

25 MR. BENTLEY: Yeah. Okay. Judge, I'm

1 showing the witness document R-34 for identification.

2 THE COURT: Okay.

3 MR. BENTLEY: Judge, the document I've
4 shown the witness is a three page document. The last
5 page --

6 BY MR. BENTLEY:

7 Q First of all, Dr. Williams, do you recognize
8 R-34?

9 A Yes, I do.

10 Q And what is R-34?

11 A It's the three page report that I prepared
12 following my review of the record.

13 Q Okay. I believe the document I showed you is
14 not signed on the last page.

15 A Right.

16 Q The last page is not signed.

17 A Right.

18 Q Do you recall signing that document?

19 A Yes, I do.

20 MR. BENTLEY: Okay. Judge, I have the last
21 page that's signed but I only have one -- I have two
22 copies. Judge --

23 THE COURT: Well the witness --

24 MR. BENTLEY: If it's okay -- substituting
25 the last page.

1 THE COURT: Okay.

2 MR. BENTLEY: For the witness.

3 THE COURT: Yes.

4 MR. BENTLEY: -- you so you have a complete

5 --

6 THE COURT: Right. Thank you.

7 MR. BENTLEY: -- signed document.

8 THE COURT: Thank you.

9 MS. REISMAN: I -- I have the --

10 BY MR. BENTLEY:

11 Q And if you could, Dr. Williams, just -- or

12 ~~substitute in the last page.~~

13 A Sure.

14 Q Is there any other differences in the last
15 page other than it was signed?

16 A No. I think when I sent electronically, I faxed
17 -- electronically but one was faxed and one was --

18 Q Okay.

19 A Yeah. No. It looks fine.

20 Q Again, that's the report that you prepared?

21 A Yes.

22 Q Okay. Everything in that report is true and
23 accurate to the best of your knowledge and belief?

24 A Yes, it is.

25 MR. BENTLEY: I'd like to move R-34 into

1 evidence.

2 MS. REISMAN: No objection.

3 THE COURT: R-34 in evidence.

4 (R-34 received in
5 Evidence.)

6 BY MR. BENTLEY:

7 Q Okay. Okay. Dr. Williams, I'm -- I'm not
8 going to ask you to read the report, it's in evidence
9 and the Judge can look at it at his leisure. The first
10 part of the report -- oh, I do want to highlight some
11 -- some -- some of the -- some of your findings. The
12 ~~first paragraph on page one you talk about the initial~~
13 2005 child study team evaluation. Do you recall
14 anything that struck you as -- as relevant in terms of
15 reviewing those records?

16 A In terms of the 2005 you're discussing now?

17 Q Yes.

18 A Yeah. Yeah. I reviewed that they were -- I think
19 the psychological had been completed by -- there was a
20 psychological that had been done by Cooper Learning
21 Center, I believe, and then there were other -- other
22 evaluations that had been completed by the Haddon
23 Heights child study team and the decision had been to
24 -- the ultimate decision was that there was a
25 discrepancy between the youngster's verbal

1 comprehension index and current achievement in reading
2 and math computation.

3 Q Okay. Do you -- in that particular
4 paragraph, and in particular the fourth line down, you
5 refer to H.M.'s initial individual education program --

6 A Right.

7 Q -- also dated May 31, 2008.

8 A That may be an error.

9 Q Is that accurate?

10 A No. I believe that probably should say 2005.

11 Q Okay.

12 A ~~It would have been done the same day as her~~
13 eligibility. It was just a typo. Yeah.

14 Q Okay. Anything of -- okay. Strike that.
15 Now the rest of your document review focused on the
16 assessments that were done in 2008, is that correct?

17 A Yes.

18 Q Tell us what you recall about your findings.
19 Any highlights or low lights or anything --

20 A Okay.

21 Q -- that you felt was significant?

22 A Okay. I did use -- I did review the evaluations.
23 The teacher completed assessments that were in the file
24 which included DIBELS, the DIBELS assessment that was
25 done by a teacher and a developmental reading

1 assessment also done by a teacher and the evaluation
2 that was done at St. Joe's University graduate reading
3 specialist program, the critical reading inventory
4 which noted that -- again, I think all of these were
5 done -- these assessments were done in order to get a
6 better idea about an instructional level for H.M. and
7 in terms of reading assessment.

8 And these are frequently used measures which are
9 -- the former are really progress monitoring measures.

10 Q Okay. Let's -- let's -- let's stop right
11 there.

12 A All right.

13 Q We have had a lot of testimony here that you
14 had not seen or heard --

15 A Right.

16 Q -- regarding DIBELS. Are you familiar with
17 --

18 A Yes.

19 Q -- with the -- DIBELS?

20 A I am. Yes.

21 Q Okay. What is -- what is -- first, what does
22 DIBELS stand for?

23 A Dynamic Indicators of Basic Early Literacy Skills.

24 Q Okay. And I think you said a little bit
25 about what -- what that type of assessment is all

1 about.

2 A Okay.

3 Q Tell us what your understanding of what
4 DIBELS is all about.

5 A Actually, DIBELS is -- I -- the way I describe it,
6 it's a downward extension of what we think of as DIBS
7 which are dynamic indicators of basic skills and which
8 was the original type of assessment which is much like
9 taking any kind of intermittent progress monitoring,
10 like you would have your blood pressure monitored, you
11 would have as a child height and weight monitored.

12 ~~We're taking repeated measures of -- of a child's~~
13 growth in the skill -- reading, spelling, math,
14 whatever it might be.

15 And then the DIBELS is really looking at the early
16 literacy skills initially from kindergarten to --
17 kindergarten, first, second and third grade, and are
18 the building blocks and the -- and the skills --
19 developing a rate of progress because we typically do
20 at least four -- four assessments per year so that we
21 can grasp these results and indicate whether the child
22 is moving in the appropriate direction.

23 Q How -- how -- what's the relevance -- how --
24 how weighty -- how -- how pertinent would a DIBELS
25 assessment be for a fifth grader in -- in isolation?

1 A Okay.

2 Q Meaning one --

3 A Well, I think the way it was used at -- and is
4 being used now with older students who were just -- as
5 a fifth grader. So that -- it's purpose is really
6 screening. It's purpose is progress monitoring to
7 really assess is -- are the youngster's reading skills,
8 in this case, continuing to progress as they should?
9 If we can look at that line of trajectory we use these
10 basic indicators which would be oral reading fluency,
11 spelling skills, math skills, and if we see that

12 ~~they're not then it really informs instruction so that~~
13 if the -- if the progress is not being made then we
14 know we have a consistent line to say that we're going
15 -- we're plateauing or the child's skills are declining
16 then we know we have to adjust the intervention.

17 Q Okay. How pertinent would the DIBELS test be
18 in terms of determining eligibility for special
19 education?

20 A It's not typically used as -- to determine
21 eligibility. It's information which can be considered
22 as anything would be, and if I were doing the
23 psychological evaluation, any child study team
24 evaluations they would -- that kind of information
25 would be reviewed in order -- as part of the background

1 information. But again, it's basic function is that of
2 progress monitoring, not determination of eligibility.

3 Q Okay. Now you -- and you recall reviewing
4 the DIBELS assessment for H.M. in this case?

5 A Yes, the actual assessment.

6 Q Okay. And the -- what about the DRA? We've
7 hard, again, a lot of testimony --

8 A Right.

9 Q -- in this -- and -- about the DRA?

10 A The developmental reading assessment?

11 Q Yeah.

12 A Yeah.

13 Q Tell us about that.

14 A Well, it's also a teacher administered assessment
15 and in -- in some --

16 Q Can I interrupt you? I just remembered one
17 thing before I forget.

18 A Yeah.

19 Q The DIBELS assessment, is that a norm
20 testing?

21 A Normed itself? There are benchmarks for each --
22 there are indicators that -- what you expect at each
23 level, at each grade level.

24 Q Is this -- is this a standardized test?

25 A It's standardized in its procedures meaning that

1 you have to follow the standardized method of -- of
2 administering it, but the youngsters actually then just
3 get -- get -- were getting data which would be, again,
4 to be plotted. Not to compare them against other --
5 other children that are taking the -- the test at the
6 same time, but to compare that to the expectation for
7 that grade level which would be more a criterion
8 referenced test.

9 Q Okay. I -- I interrupted you. Back to the
10 DRA.

11 A Right. A DRA is also a teacher-administered test
12 ~~which is basically done for the purpose of assessing~~
13 where the youngster is and if we talk about reading,
14 where the youngster is in the area of reading. It's
15 individually administered and it is typically done by
16 somebody who is going to be planning the instruction so
17 that they have a sense of where the -- the child is.

18 Q Is that what you mean by a curriculum-related
19 assessment?

20 A Well DIBELS -- DIBELS -- yeah. DIBELS is
21 certainly a curriculum-based assessment and meaning
22 that it's actually taken from the -- the child's
23 curriculum. If we're talking about a child at a fifth
24 grade level then we would be using fifth grade material
25 that would not come directly from their books or their

1 textbooks, their materials --

2 Q Right.

3 A -- but would be similar to. So that it's related

4 to the curriculum that the child is being taught in.

5 It is not something completely difference from what

6 they have not seen. The DRA is again similar and at

7 times if the DRA's are being used then DIBELS is not.

8 I mean, it's sometimes one or the other, at times both,

9 but it's, again, it's administered by the teacher in

10 order to be able to direct and -- and plan instruction

11 for that child.

12 Q ~~Is the DRA similar to -- the question about~~

13 the DIBELS. Is a DRA something that is -- that is

14 pertinent to a determination of eligibility in special

15 education?

16 A No. It's again more for progress monitoring and

17 determining at what level the youngster -- for example,

18 there are benchmark assessments that you would be doing

19 with -- if you sat down for the first time with a child

20 and used a DRA, first time in that school year, and

21 then from that the results would -- would direct where

22 the teacher would begin to instruction. And you

23 typically in any classroom there are a variety of

24 levels of -- of reading material such that one child

25 may begin in one level and one book, another child

1 might begin in another. So it helps differentiate the
2 instruction.

3 Q All right. Is -- is it completely worthless
4 in determining eligibility criteria?

5 A I -- I consider background material, background
6 information. You want to know is the child
7 progressing, is this something we feel is -- you know,
8 we would take that into account but it is not data that
9 is directly used to make that -- that final
10 determination of eligibility, but certainly relevant
11 data in terms of background. If we -- a child who
12 ~~would be declining, declining, declining in their types~~
13 of -- in the -- in the DRA or in DIBELS then we would
14 say something different has to be done.

15 Q Okay.

16 A This is not sufficient.

17 Q All right. Do you recall anything that was a
18 concern, any red flags regarding the DIBEL assessments
19 and the DRA assessments in your review of H.M.?

20 A No, I did not. I thought it was pretty typical of
21 what a teacher might do.

22 Q In your -- in your background, in your
23 experience as an educator, the number of years, what's
24 the most important thing about reading? Is it reading
25 out loud or is it something different?

1 A There are a lot of important things about reading.
2 You know, the National Reading Panel has -- has
3 determined that they are -- we have these important
4 things that kids need to do to be good readers and one
5 is to be able to read fluently. And the way that we
6 typically assess reading fluency, because we can hear
7 it, is we ask children to read out loud.

8 Q Okay.

9 A Yeah. And in a typical curriculum-based
10 assessment we would ask the child to read three one
11 minute passages and then we would throw out the -- the
12 ~~top, throw out the bottom and we would use what would~~
13 be the mid point or what would be the -- considering
14 that may be the typical because we know that sometimes
15 depending on the passage and depending on the
16 vocabulary and some of the things in that reading
17 passage it might be more difficult for the child.

18 So we -- so we strive to get what would be
19 consistent or mid point in terms of their skill and
20 then we -- and since we're doing this over time,
21 repeatedly over time that we then have a consistent
22 estimate of how a child is -- is doing.

23 Q Did you reach any conclusions or make any
24 determinations as to H.M.'s abilities regarding
25 regarding out loud? Do you recall --

1 A Looking at the documents, it seemed that she was
2 doing acceptably for her age. Of course, I didn't hear
3 her, I didn't see her. I think we had an actual DIBELS
4 protocol or information that came, written work that
5 came right from the DIBELS and -- and the information
6 that was reported in -- actually her rate of reading or
7 her -- it is usually done in words read per minute and
8 then with any correction for errors or words -- or
9 words -- accurately.

10 Q Okay.

11 A Yeah. But she seemed to be on -- on target.

12 Q ~~What about -- what about comprehension?~~

13 A Well I --

14 Q Reading --

15 A Right. The DRA really does a better job looking
16 at comprehension.

17 Q Forget about --

18 A Okay.

19 Q -- here. Just in general.

20 A Oh, sure.

21 Q About --

22 A In reading? Okay.

23 Q Yeah.

24 A Of course, it's -- I mean, we do have youngsters
25 who can read fluently, they sound great, but they can't

1 -- they're not understanding what they read. So we
2 have to assess their understanding of the meaning of
3 what they read so that we have to ask them questions.
4 We do it one of two ways: we ask them questions about
5 what they've read or we ask them to retell what they've
6 read. So if they can 1) answer questions correctly; or
7 2) be able to tell us with some reasonable bit of
8 accuracy and detail what they have read then we have --
9 we have a sense that they have comprehended what
10 they've read, they have not just read words without
11 meaning.

12 Q Okay. You've heard the terms -- terms
13 "learning to read" and "reading to learn?"

14 A Yes. I've used those terms with my students.
15 Yes.

16 Q How would -- using those terms how would you
17 describe H.M. --

18 A All right.

19 Q -- based upon your -- your --

20 A Okay. Well, typically in general we would say
21 that from grades kindergarten or first grade to third
22 grade we learn to read, kids learn to read. So they're
23 learning the -- the critical skills of reading.

24 Q Okay.

25 A And then beginning fourth through -- from them on

1 is that we use those skills in order to learn more
2 difficult material like science and social studies. So
3 we use those reading skills in order to be able to --
4 to master the content.

5 Q Okay.

6 A The -- the focus is then not on specific isolated
7 skills but more on more complex comprehension --
8 situation.

9 Q Where would H.M. fall in?

10 A Well, it looked to me like she was -- she had --
11 she was in the reading to learn. As a fifth grader
12 ~~that's where I would expect her to be.~~

13 Q Do you know what her instructional reading
14 level was in fifth grade?

15 A Well, from what I could see in the latest thing --
16 the latest information came from that critical reading
17 inventory that was done through St. Joe's reading
18 specialist program is that they said she was -- "She
19 would benefit from instruction at the fifth grade level
20 with emphasis on oral and written task replaced --
21 related to her response to text as -- to development of
22 greater language abilities." That last part was a
23 quote.

24 Q In terms of what?

25 A The last -- in terms of the report that was

1 written from the critical reading inventory. So from
2 that information it was indicated, which was done in
3 May of 2008, that she was instructional at a fifth
4 grade level.

5 Q Okay. What about the information that was
6 available to the team when -- when it made its decision
7 --

8 A Okay.

9 Q -- in May of -- about H.M.'s instructional
10 reading level?

11 A Okay. Well, and I guess that kind of moves into
12 ~~the second part of the --~~

13 Q Yeah. Good segue.

14 A Right. As part of the reevaluation there was a
15 comprehensive, there -- there were three evaluations
16 completed one of which was the learning evaluation,
17 learning assessment which looked at -- an in-depth look
18 at her reading skills. And I think if I'm not mistaken
19 because of the concerns and the questions that parents
20 and teachers had about her skills, about her reading
21 skills, that the learning assessment was tailored to
22 address the questions that were done.

23 There's a variety of standardized tests and norm-
24 referenced tests that could be used to assess a
25 youngster's reading and these -- the learning

1 assessment was -- you know, the tools were chosen to
2 help address some of the questions.

3 Q Let's focus on the learning assessment --

4 A Okay.

5 Q -- based upon your review of -- what was your
6 opinion as to the -- the -- the choices of the
7 assessment given the -- the suspected disabilities?

8 A Okay. Again, my first comment was I thought it
9 was very comprehensive and that I was glad to see that
10 not only were standardized tests reported which was the
11 Woodcock-Johnson test of achievement, but there was
12 ~~also there were some other instruments used. Plus~~

13 there was a very good functional assessment done,
14 meaning that, you know, we're looking at how kids -- a
15 point in time when they're being assessed. So you --
16 you go through a -- a testing session and the results
17 are -- the -- the best assessment tools we have during
18 a learning assessment.

19 And -- and all assessment, you know, is not
20 perfect but then -- but also -- did a very good, nice
21 job of looking at how she was functioning in the
22 classroom, what her grades were on her report card,
23 what her -- how she had done on the State -- the New
24 Jersey "ASK."

25 Q Okay.

1 A And the various assessments. So it was
2 comprehensive in my -- to my thinking that they had not
3 just relied upon the assessment results which were done
4 in April -- on April 1st and April 8th, but a
5 comprehensive look at her entire functional skills.

6 Q So were you satisfied with the --

7 A I was.

8 Q -- with the choices of assessment tools?

9 A Yeah. My first -- honestly, my first thought was
10 why the Gray Oral Reading Test but it was selected
11 because that was a concern that was expressed with her
12 ~~reading fluency. And so that again, you have a choice~~
13 of what instruments do you use? We typically don't
14 want to test children for hours and hours and hours, we
15 select what we thinking will get the -- the most --
16 that will be the -- give us the most knowledge, the
17 best results in terms of what we -- addressing the
18 issue.

19 Q Okay. How about the -- again, based upon
20 records review, you didn't talk to any of the child
21 study team?

22 A No, I did not.

23 Q Correct? Based upon your review of the
24 records --

25 A Right.

1 Q -- was there any kind of concerns in your
2 mind as to the manner in which the tests were
3 administered?

4 A No. I did not see anything that would not be --
5 that I would consider irregular. I thought they were
6 -- they were fine. They were done well.

7 Q Okay. The -- on the learning assessment as
8 well, was there anything found of a concern in terms of
9 how the test results were interpreted?

10 A No.

11 Q Okay. Same questions regarding the
12 ~~psychological evaluation. Any concerns about the tests~~
13 that were chosen to be administered and the -- the
14 manner in which they were administered?

15 A No. None.

16 Q Okay. What's the -- given all the assess-
17 ments and the -- the material that the team had based
18 upon your review, the team reached a conclusion
19 regarding -- that H.M.'s not eligible. Do you agree or
20 disagree with that decision?

21 A From the information that I saw I would agree.

22 Q Okay. Why -- why do you agree with that?
23 Why do you believe that it was a proper determination?

24 A Well, I thought that they did a very comprehensive
25 assessment and that they had not just, and I'm

1 restating this, that they had not just included the
2 information that came from that assessment session,
3 that they really had taken a look at how this youngster
4 was functioning in the classroom, what her teachers had
5 to say. There were teacher interviews, both special ed
6 and general education teachers. They looked at those
7 indicators as in the -- you know, the New Jersey ASK.

8 They looked at which would be the measure of the
9 core curriculum content standards and she had met all
10 of those. She was doing well with that. She was
11 earning A's and B's on her -- on her report card and
12 ~~thought that, you know, the question in eligibility as~~
13 -- as I see it is that not is this child perfect at
14 this point, not are all skills -- but is this an
15 educational disability?

16 Q Okay. Tell us about that.

17 A Well, you can have kids who have issues that are
18 -- or concerns or strengths and weaknesses, and I
19 would submit that all children, all people have
20 strengths and weaknesses. If all of us were assessed
21 at this point, there are things that we do better than
22 others. And any time that you do an assessment of a
23 youngster, we recognize that our decision is, does this
24 child require special education in order to progress
25 appropriately and as we would expect them to do in

1 their grade level?

2 So that while there can be issues that are still
3 existing as in specific skills that the child has, the
4 question becomes is special education required or is
5 there an educational disability? And I think that's
6 one of the most weighty decisions that we make because
7 as a -- someone like myself and I'm sure other -- other
8 people that do the same thing I do is we want the best
9 for every child. We want the -- we want the child to
10 have all the supports they need in order to be
11 successful.

12 ~~And in my experience when we see a child who has~~
13 been successful and who is progressing and all of our
14 indicators say that they are progress, that it's an
15 opportunity to say, "This is terrific, this is
16 wonderful, let's celebrate this success," and also say
17 to the child that "You've worked very hard," and
18 there's all indications that from what I've read that
19 H.M. is a hard worker, she's very motivated, she tries
20 hard and that she indeed has been able to -- to
21 progress nicely in a great, appropriate way.

22 So are there other things that could be -- that
23 she could benefit from? Perhaps, and I know that, you
24 know, Haddon Heights has other services. Is there an
25 educational disability? And my conclusion was in

1 looking at what the team had provided, what the
2 background information was, is that it was not to the
3 degree that required -- educational disability that
4 would require special education.

5 Q Now you mentioned a St. Joe's assessment. I
6 believe you testified that that was performed after the
7 team's decision --

8 A I would have --

9 Q -- had been reached?

10 A Yeah. That was done May 2nd and the team
11 recommended -- the date of -- well their evaluations
12 ~~were done in March and April.~~

13 Q Let me ask you this. Do you know whether the
14 team had the St. Joe's evaluation in its hands when it
15 made its decision to declassify H.M.?

16 A I do not. I have no certainty that they did.

17 Q Okay. Given that response, do you -- is
18 there anything you can recall in the St. Joe's
19 evaluation that made you take a second look or would
20 cause you to second guess the team's decision?

21 A No. What I saw, and as far as having written many
22 reports myself is that, you know, you -- you include
23 all of the information, all of the child's behaviors,
24 all of the test results, and what I saw is the bottom
25 line was that she would benefit from instruction at

1 fifth grade level which -- which she was -- which she
2 was doing at this point.

3 Her I.E.P. was -- she was included in a general
4 education fifth grade setting. She was getting pullout
5 support from the special ed teacher, which support is
6 not primary instruction. Support is just some
7 additional help. But not -- her -- primary instruction
8 was coming -- was being delivered in fifth grade.

9 Q Was that relevant in terms of the -- the --
10 the scope or degree of services that were -- that was
11 in H.M.'s IEP, fifth grade. Was that a determination
12 ~~in terms of eligibility? Was that a factor, how much~~
13 support she's getting?

14 A Oh, I think something has to be considered, it's
15 just that, you know, you would not take a youngster
16 whose entire program is being provided in special
17 education and suddenly withdraw that -- that
18 instruction. But the fact that our goal is to educate
19 youngsters within the least-restrictive environment so
20 that we would like them to be in -- in general
21 education for as much of the time as they can be
22 successful. And H.M. was being successful with -- with
23 a half hour a day, I think, of support.

24 Q Okay. You made some recommendations that --
25 in your report. I think -- is a bad word. You talked

1 about -- your last paragraph.

2 A Okay.

3 Q You talked about her specific areas of
4 strengths and weaknesses. Do you recall what those
5 strengths and weaknesses are? You may -- H.M. is not a
6 perfect student.

7 A I haven't met a perfect student yet.

8 Q Right.

9 A No. I thought certainly her strengths, she has --
10 she's achieving, she's doing what's expected of her as
11 a fifth grader, you know, just -- although I didn't
12 meet H.M., the fact that's motivated, that's she's a --

13 she's a -- she works very hard, you know, she gets
14 credit for that. Does she have some areas of -- that
15 she could benefit from? I never like to see a child
16 removed from services when there's not something put in
17 as a fail safe or as a -- you know, we think of it as,
18 you know, what's going to take the place of what she's
19 -- of what she is currently receiving because in this
20 case we don't want to withdraw some help that -- that
21 she may need.

22 There are other services available in general
23 education. You know, there's reading -- reading
24 specialists, people who have special training that
25 area. Classroom teachers are -- are having to take on

1 increased amount of differentiation in their
2 instruction because we know that kids are certainly
3 what is average is a huge range. You know, if we look
4 at percentile scores between the 25th and the 75th
5 percentile is -- is average. So all children are not
6 reading and doing things at the same level at the same
7 time.

8 Q In a -- in a typical fifth grade class, there
9 is --

10 A Yes.

11 Q -- various levels of readers?

12 ~~A Yes. Absolutely. It's a huge task for teachers~~
13 but they -- we've -- you know, I think we're developing
14 the kinds of instructional materials, the kinds of
15 training for teachers that will allow them to do that.

16 Q Do you know if H.M. received any type of
17 accommodations on her New Jersey ASK report that they
18 -- and -- what level?

19 A Honestly, I don't recall that there was anything
20 that was -- that I saw that that would have indicated
21 that she was given any kind of accommodations. There
22 could have been. I may have missed it.

23 Q Okay.

24 A Oh, I was going to say I think she had been
25 consistently through fourth and fifth grade. I saw a

1 consistent pattern that indicated, you know, she is --
2 she was able to get a handle on and meet those
3 benchmarks.

4 Q Would it affect your opinion one way or
5 another if the evidence suggested that H.M. received
6 very little support, very little accommodations from
7 the New Jersey ASK?

8 A Well, there are youngsters who -- who even through
9 a 504 plan can be given some accommodations, so not
10 really. No. Not --

11 Q Okay. All right.

12 ~~MR. BENTLEY: I'm -- I'm -- I think I'm~~
13 pretty close to finishing, Judge. I just -- do you
14 want me to just --

15 THE COURT: Right. Off the record or --

16 MR. BENTLEY: No. We can --

17 THE COURT: Okay.

18 MR. BENTLEY: -- that on.

19 THE COURT: Sure.

20 BY MR. BENTLEY:

21 Q Did you receive any directions or
22 instructions from Mr. Rafferty or anyone else from
23 Haddon Heights regarding what your final determination
24 should be?

25 A My recollection was I was just asked to render an

1 opinion, whatever that be. It didn't -- an honest
2 opinion of what I -- I was -- I thought.

3 Q The -- are you familiar with the term "severe
4 discrepancy," I assume?

5 A Yes.

6 Q What is that?

7 A Well, it's -- it's the current system that we're
8 using and continue to use in New Jersey, although there
9 is -- there is movement throughout the country that
10 there would be another way of looking at things that --
11 a learning disability is determined by a severe
12 ~~discrepancy between a youngster's academic abilities~~
13 and their potential for learning which would -- we
14 think of as cognitive or intellectual abilities.

15 Q And did you -- do you recall, based upon your
16 record review whether or not there was a finding of any
17 severe discrepancy with H.M.?

18 A I looked at this as -- in terms of a severe
19 discrepancy is that the other caveat that I didn't
20 mention is that there also needs to be an educational
21 deficit. There needs to be -- you could have a severe
22 discrepancy, you can have 135 I.Q. and be -- depending
23 on how you -- how you define "severe," every district
24 has a different method of -- of -- or a different -- is
25 it one standard deviation? Is it one and a half? Is

1 it two standard deviations?

2 Q Right.

3 A So if I had a -- if a youngster had a 135 I.Q. but
4 yet was achieving at 110, say, achievement, there might
5 be a difference, however, there's no educational
6 disability because everything is within the average
7 range. Okay. So I looked at it from those lense and
8 looking at it is that she continues to demonstrate on
9 all indicators at least average ability achievement in
10 relationship to, you know, her expectation. I believe
11 in the last evaluation, psychological evaluation, that
12 ~~her intellectual ability was within the high average~~

13 range.

14 Q And her ability was -- strike that. Back up.
15 In terms of looking at her intellectual ability, what
16 scores are you looking at, if that's the right term?

17 A Right. I'm looking at the Wexler Intelligence
18 Scale for Children that was -- the fourth edition that
19 was administered March 31, 2008 by Mena Maddie, of
20 which her full scale I.Q. was 114.

21 Q And that you say was in the high average
22 range?

23 A That's the high average range. Yes.

24 Q Anything -- compare that with what?

25 A With the information that was in the learning

1 assessment which would indicate that again we have many
2 different scores. You have to sort through this. That
3 she's also within the average range with -- for her
4 basic reading skills and -- and broad reading, math,
5 broad math, broad written language all were within the
6 average range.

7 Q And how does the functional assessment that
8 we talked about, the classroom teachers, the
9 standardized testing, the New Jersey ASK, how does that
10 --

11 A I thought that was --

12 Q -- into the equation?

13 A -- even stronger supporting information because I
14 don't believe we can just look at the discreet numbers
15 for a significant discrepancy. I mean, that -- that --
16 I think that's one test we can go through but then we
17 look at how is she functioning. And that was even --
18 my way of thinking, you know, she's earning A's and B's
19 in her major subjects in her report card, she's passing
20 all indicators that are set by the State of New Jersey,
21 and again she's -- you know, she's -- she's moving
22 along very nicely.

23 Q Do you recall reviewing the Lindamood Bell
24 assessment?

25 A I did see that. Yes. That was done, but I don't

1 recall when that was completed, the day in which it was
2 completed.

3 Q Do you recall any type of -- of information
4 from the Lindamood Bell assessment that would be
5 contrary to what the team's findings were?

6 A I -- I would have to know who -- who -- who
7 administered the Lindamood Bell. What -- what was --
8 who was the -- was there a report? In order to recall
9 that --

10 Q You -- you don't recall right now what that
11 --

12 A ~~No, I don't.~~

13 Q Do you recall that -- any kind of red flags
14 being raised regarding the Lindamood Bell report?

15 A I -- not to my knowledge. No. And I guess I have
16 to preface that by saying that any time we evaluate a
17 child we get many over time, we get a lot of indicators
18 of where that child might be academically or whatever
19 area we're looking at and that while -- I think we have
20 -- we have to use multiple measures in order to, you
21 know, we have to look at the big picture and try to say
22 given all the data we have, what's the consistent
23 pattern here?

24 We can all have bad days, we can all have good
25 days where we are over achieving or we just did

1 exceptionally well, but looking at the big picture at
2 the multiple measures. But I don't recall -- I can't
3 -- I can't recall anything that would be specifically
4 concerning from the Lindamood Bell.

5 Q And you're looking at that big picture, that
6 global --

7 A Well I'm looking at multiple measures of
8 indicators and as I -- as I tell students we never make
9 decisions based on one piece of data. You know, we
10 have substantiate that across time and look at, you
11 know, you develop hypothesis. Especially initial
12 ~~evaluations, you develop a hypothesis and then -- but~~
13 then you look to support that so that you're not making
14 a decision about a child based on one piece of
15 information, one assessment, you're looking for
16 patterns, and is that pattern -- what -- what is the --
17 what does that tell you about what the child's needs
18 are.

19 Q And again, based upon your review of the team
20 looking at all that information and its determination
21 of eligibility, do you concur with that decision?

22 A I do. I thought that the -- the ultimate, you
23 know, the evaluation, the re-eval was done in March --
24 in April of 2008 was very comprehensive.

25 Q And -- and the results?

1 A I agreed with.

2 MR. BENTLEY: Nothing further, Judge.

3 Thank you.

4 THE COURT: All right. Do you need a few
5 minutes or do you want to get into cross?

6 MS. REISMAN: Five minutes?

7 THE COURT: Fine, I can use it also. Five.

8 MR. BENTLEY: And we can talk about the --

9 THE WITNESS: Can I ask -- this?

10 THE COURT: Yes, certainly.

11 THE WITNESS: (Laughing.)

12 ~~THE COURT: We'll go off the record.~~

13 (BRIEF RECESS)

14 THE COURT: All right. We're now back on
15 the record. Counsel, you may cross examine.

16 CROSS EXAMINATION BY MS. REISMAN:

17 Q Dr. Williams, you're not a reading
18 specialist, correct?

19 A No, I'm not.

20 Q I'm sorry.

21 A No, I'm not.

22 Q So your area of expertise is in school
23 psychology which -- rely on the assessments done by
24 others to determine eligibility?

25 A No. School psychologists also can assess in the

1 area of reading and are trained to do that. I've been
2 trained on a national model so it's only the State of
3 New Jersey where school psychologists really don't do
4 direct assessment of reading. In any other state they
5 would. So my responsibility and also being training
6 students who are -- graduate students, is to train them
7 in the full scope of assessment. But no, I'm not a
8 reading specialist but I know a lot about reading.

9 Q You're not -- you're not certified in -- to
10 do reading assessments in New Jersey?

11 A Not specifically.

12 ~~Q And in terms of this particular case you~~
13 didn't do any assessments?

14 A I did not.

15 Q Did you?

16 A No, I did not.

17 Q So you relied upon the data that were given
18 to you?

19 A Yes, I did. Yes, I did.

20 Q And your completion -- only be -- state?

21 A Correct.

22 Q And as a school psychologist you are aware of
23 the importance of fluency in reading, correct?

24 A Yes, I am.

25 Q And in fact the New Jersey Administrative

1 Code that --

2 A (Shuffling papers.)

3 Q -- defined a specific learning disability
4 when there's a discrepancy between ability and
5 achievement, specifically in reading fluency, is that
6 correct?

7 A That has been added. Yes.

8 Q Yes? That has been added?

9 A Hmm-hmm.

10 Q So -- and that was added recently after 2004?

11 A Hmm-hmm.

12 Q Yes?

13 A Yes.

14 Q Sorry. (Laughing.) And while it's true that
15 the ability to read orally in front of a class is -- is
16 not the ultimate goal in assessing fluency, we do need
17 to assess fluency for readers, correct?

18 A Yes.

19 Q And would you agree that fluency is the
20 accurate, rapid, expressive oral reading that's applied
21 during and makes possible silent reading comprehension?

22 A That would be one definition. Sure. Yes.

23 Q Do -- do you have a different definition you
24 would use?

25 A No. It's been defined, I think, a variety of

1 ways. The accurate piece is very important because,
2 again, we can have people who can read rapidly but not
3 accurately. So it's a combination of speed and
4 accuracy.

5 Q And the reason that speed and accuracy is
6 important is that you need automaticity as you go to
7 higher levels in comprehension, correction?

8 A Yes.

9 Q And that --

10 THE COURT: What is that word?
11 Automaticity?

12 MS. REISMAN: Automaticity.

13 MR. BENTLEY: Is that a word?

14 THE WITNESS: Yes.

15 MS. REISMAN: It is a word.

16 THE WITNESS: It is a word. It is.

17 MS. REISMAN: (Laughing.)

18 THE WITNESS: The automatic -- performing
19 automatically. You can say the alphabet automatically.
20 You have it at the automatic level.

21 BY MS. REISMAN:

22 Q And -- and the reason that's important is
23 that although we're able to do things we alternate our
24 attention between one activity and another, as in
25 reading we can alternate between trying to decode and

1 trying to comprehend. That's correct, right?

2 A Hmm-hmm.

3 THE COURT: That's -- you have to answer
4 "yes" or no."

5 THE WITNESS: Yes. Oh, sorry.

6 MS. REISMAN: (Laughing.)

7 THE WITNESS: Yes.

8 BY MS. REISMAN:

9 Q But as you get to higher level text you need
10 the decoding to be more automatic in order to
11 comprehend, correct?

12 A ~~If you're unfamiliar with the word. If you are --~~
13 many times what happens with good readers is that --
14 you know, and we say this is just the, you know, the
15 process of learning to read is that, you know, you use
16 your decoding skills when you come to an unfamiliar
17 word. Many times the automaticity is just you know it
18 by sight because you've read it many, many times
19 before.

20 Q And then students move into fourth and sixth
21 grade, the middle school grades, isn't it true they --
22 they see a large number of new words every year?

23 A Yes, they do. The estimate is -- is huge and
24 typically that's why any kind of lesson that is taught
25 in science or social studies it usually begins with

1 vocabulary because this would be something that would
2 not have been introduced in a typical reading
3 instruction. So we begin with new words so that when
4 you meet them in the course of reading you are able to
5 be familiar with them.

6 Q Okay. Is it like on the order of 10,000 new
7 words, would you say?

8 A Yeah. I've seen certainly even -- if I had my
9 Powerpoints with me I could tell you. It's a lot of
10 new words that kids have to incorporate.

11 Q Okay. And isn't -- isn't it the automaticity
12 of decoding a critical component of fluency?

13 A It helps you read more quickly. But again, as
14 kids -- as children become more proficient readers it's
15 less the deliberate use of skills it's more that the --
16 you know, that the familiarity. That's why when
17 children are read to, when children practice reading
18 that -- that the reading skills typically, that's how
19 we improve readings kills by practice and exposure.

20 Q All right. And you're expected by fifth
21 grade to have a certain level of fluency, correct?

22 A There would -- it would be make reading easier.
23 It would -- and I think that if you're still relying
24 upon your decoding skills to do that it does slow you
25 down.

1 Q If you're -- if the way you're reading when
2 you're in fifth grade and sixth grade, the -- those
3 level -- and the way that you're reading is still using
4 those early strategies of going back and trying to
5 figure out the context or doing actual decoding, that
6 is -- that's -- that will slow you down?

7 MR. BENTLEY: Judge, I'm going to object.
8 I'm not -- I'm not seeing the relevancy of discussions
9 regarding speculative natures of what's happening in
10 sixth grade or even in fifth grade. I mean, this is
11 all very nice academically, I'm not sure how it's going
12 to help you in your approach of whether the decision
13 made in May of 2008 was a proper decision. You know,
14 how many words are going to be in sixth grade? How
15 many new words is there going to be, the -- skills and
16 what they have in sixth grade. I'm not sure where
17 we're going with this, Judge.

18 MS. REISMAN: In May of 2008 the team
19 determined that H.M. did not have a discrepancy in the
20 area of fluency and I think that the -- the need to be
21 able to be a fluent reader to achieve what's necessary
22 to achieve functionally in school is absolutely
23 relevant.

24 MR. BENTLEY: Judge, the team determined
25 that H.M. is not eligible for special education and

1 related services. The determination of whether there
2 was a severe discrepancy is one part of that -- of that
3 equation. So I -- I disagree with -- with an
4 objection.

5 THE COURT: All right. (Clearing throat.)
6 I -- excuse me. I think Counsel is inquiring into an
7 area which may -- which may be theoretical in nature in
8 -- in order to make a point and I'll permit her to
9 continue, again, to a point. (Laughing.) Objection's
10 overruled.

11 MR. BENTLEY: Thank you.

12 ~~MS. REISMAN: Excuse me one second. I just~~
13 need to --

14 BY MS. REISMAN:

15 Q Would you agree that progress in reading
16 beyond -- stages is dependent upon reading words
17 fluently and is dependent on familiarity with the words
18 in their oral form?

19 A Familiarity with words in their oral form. I --
20 it's not typical language that we would use. Dependent
21 upon the rate and accuracy of your ability to decode
22 words.

23 Q And how do you measure someone's rate of
24 accuracy of the ability to decode words?

25 A It's a variety of ways, but typically if you're

1 doing it on a -- as we talked about earlier if you're
2 doing it as a progress monitoring, in other words, if
3 you're taking those periodic, those DIBELS, dynamic
4 indicator of basic skills without using that particular
5 format, but we're going to ask them to read orally for
6 one minute and then we're going to indicate, we're
7 going to note, as a trained person, you note whether
8 they have been able to read accurately, they pronounced
9 the words correctly and you note how many words per
10 minute they've read within that minute. And then, you
11 know, we throw out the top, throw out the bottom and
12 ~~look at the middle. We typically do that, have three~~
13 indicators.

14 Q And so in order to determine rate and
15 accuracy --

16 A (Coughing.) Excuse me.

17 Q -- to determine fluency you have to do that
18 orally, correct?

19 A Yes. Yes. And in many of the instruments that
20 were used during the learning evaluation that -- that
21 would be the way it would have been done. There's also
22 silent reading but we can't -- we don't have a way of
23 listening to that. We can only ask questions about
24 what the youngster has read in order to determine if
25 they've read.

1 Q Right. And you can ask questions about
2 whether or not a youngster has read to determine their
3 comprehension, correct?

4 A Right, and with the assumption is that they would
5 have to have been able to read -- read fluently in
6 order to comprehend. But silent -- but with silent
7 reading we don't have that evidence.

8 Q Right. You can't tell through silent reading
9 how many steps the learner is going through to
10 comprehend?

11 A Well, if it's timed then we can because what we --
12 ~~whenever a youngster has to -- has to use another step~~
13 -- close them down. We can't say that's an error, we
14 just know that at the end of a -- a -- a timed interval
15 that depending on how much they've accomplished, how
16 far they've gotten, that a slower reader is going to
17 accomplish less. A more fluent reader is going to get
18 through more.

19 Q Okay. The -- the assessments that were used
20 in this case were untimed assessments, were they not?

21 A It depends on which -- what you're using. If
22 you're using -- if you're looking at some of the
23 informal measures they were probably timed. If you're
24 looking at the -- the information in the learning
25 evaluation they would have been untimed.

1 Q So the results in --

2 A For the eligibility.

3 Q -- in Ms. Woodland's report --

4 A Correct.

5 Q -- those were based on tests that were not
6 timed?

7 A To my recollection. Yes.

8 Q So the -- the -- the learner would have time
9 to do whatever was necessary to extract meaning from
10 the text, correct?

11 A As far -- yes. As far as I recall.

12 Q ~~And that wouldn't give you that wouldn't~~
13 give you information about how fluent she was if it was
14 an untimed test?

15 A No. If you're looking at ready fluency then
16 you're going to have to measure it the same way that we
17 talked about before with rate and accuracy.

18 Q And you can only do that orally?

19 A That's the most effective way of doing it.

20 Q Or -- or you could do it -- are you -- what's
21 the other way you can do it, if not orally?

22 A Well, the -- the only -- the only -- I would say
23 that probably orally would be the most effective way of
24 doing it otherwise you would have a lot of information.
25 You have to make some -- some judgment based on if you

1 can't hear the child read. Yet we understand that not
2 all kids are -- are good oral readers. They -- they
3 get nervous. Other things interfere when they're asked
4 to perform kind of on -- on cue.

5 Q In rendering your report I believe you said
6 that you testified that one of the -- was -- was the
7 functional information in the evaluations that you were
8 given by the District, is that correct?

9 A Yes.

10 Q And that includes the -- both the psycho-
11 logical assessment and the learning assessment?

12 A ~~Actually, the learning assessment was probably, I~~
13 think, had more relevant information in terms of
14 achievement.

15 Q Okay. Did you rely upon the information in
16 the assessments that H.M. was -- independently at the
17 fourth grade level?

18 A I'm not sure which assessment you were referring
19 to.

20 Q That's R-32.

21 MR. BENTLEY: The psychological?

22 MS. REISMAN: Yes.

23 THE WITNESS: Right. One of them by Mena
24 Maddie, March 2008. Okay.

25 MR. BENTLEY: I'm sorry. What was the

1 question?

2 BY MS. REISMAN:

3 Q The question was did she rely upon the
4 information -- independent -- grade levels.

5 A Well, as I recall reading this, and I see here
6 that this was part of the background information so
7 that would be the information which came from --
8 someone reported to -- it was not directly assessed by
9 Ms. Maddie. H.M.'s classroom teacher and resource
10 teacher note that H.M. is a motivated, social young
11 woman. She participate independently and completes --
12 work. Maybe --

13 Q I'm asking -- I'm looking at -- if -- if that
14 weighed at all in terms of your determination --
15 reading level -- grade?

16 A Honestly, that did not weigh as much as the
17 information that was reported in the St. Joe's report
18 because that was a reading assessment that was directly
19 done by, you know, a reading specialist and the other
20 was information more -- anecdotal information coming
21 from the teacher.

22 Q Okay. You -- and that's the critical reading
23 -- report?

24 A Yes.

25 Q Have you ever administered the critical

1 reading --

2 A No, I have not. It's not a widely administered --
3 it's one I believe that the woman who -- who -- who
4 evaluated H.M., it was her mentor, her professor who
5 developed it. So it may be specifically used in that
6 area but I'm not -- I have never administered it. No.

7 THE COURT: You've never (clearing throat)
8 -- never what?

9 THE WITNESS: I've never administered it.

10 THE COURT: Thank you.

11 BY MS. REESEMAN:

12 Q ~~Have you -- have you read a number of CRI,~~
13 Critical Reading Inventory reports?

14 A No, I have not.

15 Q So you relied upon the information there?

16 A Well, again, I would say that this was part of the
17 pattern that I saw that she was -- when she was
18 functioning in a fifth grade classroom and doing well,
19 A's and B's on her report card, seemed to be responding
20 well to the intervention and the instruction that her
21 teachers were giving her. So I was just -- again, it
22 was more consistent with what the full picture of H.M.

23 Q Given your lack of experience with the CRI
24 would you feel comfortable basing conclusions about
25 H.M.'s reading ability on the results of that

1 instrument?

2 A I have no reason to doubt the credentials of the
3 person who administered it. I have respect for
4 colleagues who are, you know, trained and -- and in
5 their field of expertise. But again, it was consistent
6 information. If -- to be as -- to be as successful as
7 she's been in -- in her grade level placement it did
8 not surprise me that that -- that fit in with all of
9 the other information I was getting in terms of -- in
10 order to be successful in the fifth grade with the
11 material she was being taught, she would need to have a
12 ~~degree of competency at that level.~~

13 Q And did you -- did you speak to the person
14 who administered the CRI?

15 A I did not.

16 Q And you -- you've never spoken to the
17 individuals who designed the CRI, correct?

18 A I have not. No.

19 Q And would you defer to the interpretation of
20 the person who administered the assessment as to what
21 it meant in terms of reading --

22 A I had no reason to doubt the credibility and the
23 credentials of the individual.

24 Q So you would defer to that person?

25 A Unless I found other -- other information that

1 would suggest that they -- you know, that I should
2 question it. I -- I had no reason not to do that.

3 Q You indicated that you reviewed a diagnostic
4 reading assessment?

5 A There was something in her file.

6 Q Did you review one diagnostic reading
7 assessment or two?

8 A I believe there were two, but again I would have
9 to take a look at that again.

10 Q And the -- I believe you said the diagnostic
11 reading assessment is a progress monitoring tool,
12 correct?

13 A It's the developmental reading assessment.

14 Q Oh, I'm sorry.

15 A Yes. Yes. Yes. But DRA is typically -- referred
16 to. Yeah. Yes. It informs instruction typically done
17 by the teacher in order for the teacher to have a sense
18 of how -- to establish goals and -- and objectives for
19 reading instruction.

20 So again, there are different levels of --
21 teachers are trained to do a certain level of -- of
22 assessment and then you move up to, you know reading
23 assessments. People are trained to do reading
24 assessments, people are trained to learning
25 evaluations, psychological. You know, it's all at

1 different levels of expertise but it's a commonly used
2 method by teachers.

3 Q And the teachers are trained to use the --

4 A Dibbles.

5 Q The developmental reading assessment to
6 monitor progress, correct?

7 A And to inform instruction.

8 Q And -- and to inform instruction. And are
9 you familiar with the term "inter-rater reliability"?

10 A Yes.

11 Q And how is -- how do the authors of an
12 ~~instrument such as the developmental reading assessment~~
13 ensure inter-rater reliability?

14 A It -- as they would in any --

15 Q Let's back up. What is inter-rater
16 reliability?

17 A Inter -- inter-rater reliability means that if you
18 have a standard of training that every person -- if --
19 if every person in this room were trained a similar way
20 and we held to that training protocol and to assess
21 whatever it might be we should get similar results
22 because we are following a standardized method. So
23 that we look for -- for example, in an -- an
24 experimental study, if we were doing an experimental
25 study of children's reading abilities we would look for

1 high inter-rater reliability such as it wasn't
2 dependent upon the rater, the variabilities were not
3 dependent upon the rater, rather that the variabilities
4 would be dependent upon the actual performance of the
5 youngster.

6 Q And do you know how the authors of diagnostic
7 reading assessment ensure inter-rater reliability?

8 A Well, as a -- as a more informal measure if there
9 are less stringent criteria -- criteria for it because,
10 for example, and I'll go back to what I do which is
11 training students to do psychological evaluations, is
12 ~~that we have to ensure a high degree of standardization~~

13 because the variability should never be -- for example,
14 with an I.Q. test or any kind of assessment the -- the
15 difference is not whether I give it or another school
16 psychologist gives it, that -- so the higher degree of
17 training, the more specified the training, the more
18 degree we have of confidence in that person.

19 Q So with a -- with the developmental reading
20 assessment the teachers are expected to basically
21 follow the directions on the form?

22 A Yes. And it would depend on what kind of
23 instruction they have had, what kind of supervision
24 they have had, what kind of feedback they've gotten as
25 to -- and -- and I'm not aware of the individual

1 teachers and what that would have been.

2 Q What do you mean it would depend on what kind
3 of instruction?

4 A Well, if I'm in --

5 Q It would depend on the instructions the
6 teachers have had?

7 A Yes. The teachers are -- are trained in -- and
8 once you are -- once you're a certified teacher you
9 have in service training, you have professional
10 development and typically what happens when there's a
11 new skill that a teacher is going to be using there has
12 ~~to be training on that. So again, was that training~~

13 that was given with a lot of degree of supervision,
14 with a lot of degree of feedback. The more -- the more
15 effort that's put into that the more reliable it's
16 going to be because you may interpret it somewhat
17 differently than the person sitting next to you. The
18 more frequently you do it the better you get at doing
19 it.

20 Q I'm going to hand you what's previously been
21 marked P-8.

22 MR. BENTLEY: Is it --

23 MS. REISMAN: Yes. It's --

24 MR. BENTLEY: DRA?

25 MS. REISMAN: DRA.

1 BY MS. REISMAN:

2 Q Did you review P-8 in preparing your report?

3 A Hmm-hmm.

4 Q Yes?

5 A Yes, I'm sorry.

6 Q And this was a -- this was a DRA administered
7 by -- it -- it states on the document administered by
8 -- and -- correct?

9 A Hmm-hmm.

10 MR. BENTLEY: You have to say "yes" or
11 "no."

12 ~~THE WITNESS: Yes.~~

13 MR. BENTLEY: We can't hear the --

14 THE WITNESS: Slow learner. Yes.

15 BY MS. REISMAN:

16 Q And at the top of that the note says that
17 she's at a beginning second grade reading level but a
18 fifth grade -- level, correct?

19 A That's what I'm reading. Yes.

20 Q So this DRA established a second grade --
21 beginning second grade level, correct?

22 A I would say this was one indicator, but again I'm
23 not -- in my record review, and there were many other
24 indicators that -- that there were -- that in this
25 particular time she may not have done as well, and that

1 was a notation made by the examiner, Linda or Al
2 Gutfreund (phonetic), and it made -- but I would not
3 accept that as that was the definitive reading level at
4 this point because of the nature of the instrument.
5 It's more of a screening device. It's more of a
6 progress monitor. She did -- I'm sorry.

7 Q Go ahead.

8 A I was going to say as I look at the results of
9 this, you know, she did rather well in this particular
10 area but I don't have an indication of what she would
11 have done in a more difficult passage, you know, a
12 ~~third grade passage. If this was -- she said second~~
13 grade reading level.

14 Q Okay.

15 A Are we looking at then a different -- either a
16 follow up assessment or a different assessment on --
17 before I would accept that.

18 Q And when you say this is a screening device,
19 it screens this device -- this particular device is
20 designed to screen for both fluency and comprehension,
21 correct?

22 A Yes. Reading -- oral reading fluency is measured
23 and then they have the number of words, number of
24 miscues and then there were -- where she had to answer
25 some questions about what she had read. And then it

1 there was some written. And after reading she had to
2 write a summary or a retell of what she had read.

3 Q So when the examiner follows the directions
4 on the instrument they should get an accurate picture
5 of both comprehension and fluency, correct?

6 A Assuming that -- yes. Assuming that if they
7 followed the directions. That's what we don't know.

8 Q I'm now going to hand you what's been marked
9 as exhibit R --

10 A Okay. Which looks to have been done --

11 Q R-11 is --

12 A January 22nd.

13 Q January 22nd. It's another DRA. Do you want
14 to take a minute to look through it?

15 A Okay. (Shuffling papers.) Okay.

16 Q Did you -- have you had a chance to look at
17 R-11?

18 A Yes. I skimmed it.

19 Q And did you review R-11 when you were
20 rendering your report?

21 A Yes.

22 Q And if you look at the second page of R-11
23 there's a -- at the bottom there are instructions for
24 the person who is administering the evaluation,
25 correct?

1 A You're referring to "Use the student's oral
2 reading time to circle the words per minute?"

3 Q Yes. Yes.

4 A Okay. Yes.

5 Q And then it says, "Count the number of
6 miscues that are not self-corrected." And then right
7 below that what does it say?

8 A Below the -- the grid there?

9 Q Yeah.

10 A Yeah. "If the students were false in one or both
11 of the shaded areas below stop this assessment, assess
12 with a lower DRA, too. Next level at another time."

13 Q Reassess with a lower DRA to text level at
14 another time. So you're supposed to drop down to --

15 A Right.

16 Q -- another text level if the student has
17 miscues or words per minute that fall in the shaded
18 area. And H.M. had 12 or more miscues, correct?

19 A Correct. Yes.

20 Q Okay. In fact, if you turn to the next page
21 she had 22 miscues that were not self-corrected.

22 A Yes.

23 Q She had six miscues that were self-corrected.

24 A Yes.

25 Q Correct?

1 A Yes.

2 Q And the miscues included omissions,
3 insertions, substitutions of a visually similar -- not
4 visually similar. Correct?

5 A Yes.

6 Q Okay. And then in the far left column "The
7 student problem solves words using..." It has -- lists
8 some strategies. These are strategies you can use if,
9 you know, you don't have automaticity, correct?

10 A Yes.

11 Q Okay. So H.M. was using strategies because
12 ~~she didn't have automaticity with the test?~~

13 A It would appear so. Yes.

14 Q Okay. In -- in this case the evaluator
15 continued to administer the assessment, although the
16 instruction on the instrument said to stop the
17 assessment and to reassess with a lower DRA test level,
18 correct?

19 A Yes.

20 Q So based on your earlier testimony this --
21 this evaluator didn't follow the instructions, correct?

22 A Possibly yes. It appears what she did here is she
23 continued. I don't know what her level of -- of
24 training in this or -- or to complete a DRA is nor do I
25 know what the other individual's level of training was.

1 Q Is anyone's level of training going to allow
2 them to actually disregard the actual instructions on
3 the page?

4 A There is a -- there are times, depending on the
5 person's level of training, when we suggest they test
6 the limits, which means that although you're not going
7 to -- you're not going to continue to give credit for,
8 you're going to continue to administer something in
9 order to see where the youngster -- get more
10 qualitative information.

11 Q But if you were to test the limits, this --
12 ~~doing that with this instrument would not give you an~~
13 accurate, independent reading level if you ignored the
14 -- the explicit instruction to stop if there are a
15 certain number of miscues, isn't that right?

16 A Well, we -- we may not be able again to
17 quantitatively look at that, but we can qualitatively
18 look at because there's a lot of other things that she
19 did beyond this which was written expression because we
20 have some children who did better in one -- on area
21 than the other.

22 Q I'm not asking about anything but --

23 MR. BENTLEY: Objection. The witness is in
24 the middle of responding to the question.

25 MS. REISMAN: Well, she wasn't -- move to

1 strike. It's non-responsive. I asked a very specific
2 question.

3 THE COURT: All right.

4 THE WITNESS: Okay. Would you like --

5 THE COURT: Sustained. Sustained. Why
6 don't you ask the question again. Listen to the
7 question asked.

8 THE WITNESS: Okay.

9 THE COURT: And answer that question only.

10 BY MS. REISMAN:

11 Q Given that the person administering this
12 ~~assessment did not follow the explicit instructions on~~
13 the assessment, isn't it correct that you can't use
14 this particular assessment to establish H.M.'s
15 independent reading level?

16 A (Coughing.)

17 Q Or would you defer to a reading specialist on
18 that question?

19 A Perhaps. But what I'm thinking -- what I'm saying
20 is in general there are times when we do want to get
21 more information while, as I said, testing the limits.

22 Q Right. I understand you might want to get
23 more information, but the information you would get
24 wouldn't be her independent reading level.

25 A We could not look at that in the same way we did

1 had -- had -- if -- if the directions were followed to
2 reassess at a lower level then we would look at that --
3 if we did that we would look at that as -- with more --
4 in -- in a way that we originally set out, is what I'm
5 saying. Okay.

6 If this -- the original -- the original purpose
7 for the DRA was to determine independent reading level
8 frustration and -- and instructional level, okay, so
9 then to inform instruction. The fact that -- I would
10 not make that completely that if the person disregarded
11 this direction, I think that was what I was trying to

12 ~~answer, the person disregarded the directions, I don't~~
13 know if it was because she was attempting to test the
14 limits or she just didn't know to stop. I -- I would
15 need to ask her.

16 Q But if she was attempting to test the limits
17 it wouldn't give us H.M.'s independent reading level.
18 It might give us other information.

19 A Yes. It might tell us --

20 Q And it would not --

21 A Help us understand where the difficulties are.

22 Q Right. It would not give us her independent
23 reading level.

24 A If that was the only criteria, no.

25 Q Now you testified that part of what went into

1 your conclusion was the fact that H.M. was getting A's
2 and B's in her classes.

3 A Part of my -- yes.

4 Q Do you -- do you have any idea whether when
5 H.M. took tests if she was allowed to retake them?

6 A I believe I read in the records that part of her
7 resource center support was that she could take -- she
8 could take tests in the resource center which is a very
9 common modification that youngsters are given.

10 Q Do you know whether she was allowed to take a
11 test, and then if she didn't do well, retake the test?

12 ~~A I don't recall if I saw that in her I.E.P. but~~
13 that -- that's possible.

14 Q Okay. So she -- she was definitely getting
15 the modification of taking tests in the resource
16 center, correct?

17 MR. BENTLEY: Objection. She just said she
18 didn't know.

19 MS. REISMAN: She said she -- said she did
20 know that she was allowed to take tests in --

21 THE WITNESS: I said it is a common -- it is
22 a common modification.

23 THE COURT: That was --

24 THE WITNESS: I don't recall whether I saw
25 that on the IEP or not but it would not surprise me at

1 all.

2 BY MS. REISMAN:

3 Q Okay. So --

4 A That's part of --

5 Q So the grades that H.M. was getting reflected
6 in part the modifications that she was receiving,
7 correct?

8 A That could well -- well be. Yes.

9 Q And then what, in part, whatever instruction
10 she was receiving?

11 A Absolutely. Yes.

12 ~~Q Are you familiar with the New Jersey Core~~
13 Curriculum Content Standards?

14 A Yes.

15 Q And there are Core Curriculum Content
16 Standards that directly relate to reading fluency, are
17 they not?

18 A Yes. They're within the language arts literacy
19 component.

20 Q Okay. And when you reviewed H.M.'s IEP's you
21 -- I believe you said you reviewed the most recent IEP,
22 correct?

23 A There were many in the file so I do generally --
24 had looked at them.

25 Q Did you review all of the IEP's?

1 A Yes, but not with great detail because it was --
2 there were minimal services being offered.

3 Q Okay. Did you review the IEP's to determine
4 whether the goals and objectives were in line to
5 current Core Curriculum Content Standards?

6 A I reviewed the IEP's specifically because in --
7 if a youngster is receiving replacement instruction,
8 meaning that the primary instruction is coming through
9 special education, then -- then the goals and
10 objectives in the IEP should reflect that. In other
11 words, it's different from -- perhaps based on the Core
12 Curriculum Standards but different from what typical

13 fifth graders are getting. What I saw was a youngster
14 who was expected to achieve the Core Curriculum
15 Standards of a fifth grader, therefore many of those
16 things do not have to be included in the IEP. It's the
17 exceptions that have to be included.

18 Q Right. And -- and there were some goals and
19 objectives included in the IEP, correct?

20 A I believe so.

21 Q I'll -- I'll get you a copy of that.

22 A Thank you.

23 Q (Laughing.) Actually, I have -- got that.

24 MR. BENTLEY: The --

25 MS. REISMAN: That's the --

1 MR. BENTLEY: The offer of proof for --

2 THE COURT: No. It is -- it's in evidence.

3 MR. BENTLEY: But -- but --

4 MS. REISMAN: 2007/2008 I.E.P.

5 MR. BENTLEY: I understand, but what's the
6 reasons why it's being showed to the witness.

7 MS. REISMAN: So that she can look at the
8 goals and objectives on the document to refresh her
9 recollection.

10 MR. BENTLEY: The witness was only offered
11 in terms of the -- and eligibility.

12 ~~THE COURT: Well, I'll permit it to see --~~
13 I'm not sure what the question is yet. So --

14 MR. BENTLEY: Right. I'm sure it's -- that
15 -- that's what she's being offered for.

16 THE COURT: And you want her to --

17 MS. REISMAN: I would like for her to look
18 at the -- under "Reading skills."

19 THE WITNESS: Which would be? Right --

20 MS. REISMAN: There's one -- there's writing
21 and then the --

22 THE WITNESS: Following that? Okay. I see
23 it.

24 MR. BENTLEY: Again, Judge, I object. Why
25 is this witness outside the scope of direct? I never

1 asked her one question about the IEP. We had other
2 people who testified about the IEP. We didn't need
3 this witness to determine the IEP. We didn't ask her
4 to look at the IEP. It's outside the scope of cross.
5 If they want to call her back and -- her and pay her,
6 that's fine, but --

7 THE COURT: Well, I want to find out what
8 the question is before I rule on it so --

9 BY MS. REISMAN:

10 Q Your determination that the decision to
11 declassify H.M. was correct was in part based upon your
12 ~~conclusion based upon documentation that she was~~
13 achieving consistent with the Core Curriculum Content
14 Standards, correct?

15 A Yes.

16 Q Okay. And in making that determination did
17 you look at the goals and objectives that were aligned
18 to the Core Curriculum Content Standards in the IEP?

19 A I did not spend a lot of time looking at the --
20 the -- the IEP goals and objectives because she was
21 being -- all of the other documentation was -- in the
22 general ed setting.

23 Q Did you look at the progress reporting on the
24 goals and objectives in the IEP?

25 A What I'm looking at right now?

1 Q Yeah. Yes.

2 A I don't recall looking directly at this. But
3 again, the exception to what is not being -- if
4 whatever is being instructed through the special
5 education program should be -- what I was looking, what
6 I would have been more interested in as far -- when
7 determining is this program necessary for this
8 youngster.

9 Q But isn't the goal that's on her IEP what is
10 being instructed through the special education program?
11 Given the fact that there's a goal on her IEP, doesn't
12 ~~that indicate that she needs -- that's where she needs~~
13 support?

14 A She is needed -- support by -- by definition is
15 just supporting the general education curriculum. So
16 that my expectation is that she's following the Core
17 Curriculum Content Standards upon which the goal is
18 perhaps based. And it says right here, "Goals and
19 objectives benchmarks," but it's -- and I would more --
20 we -- as you know, the Core Curriculum Content
21 Standards are huge. They're -- you know, we're not
22 going to include them in every child's IEP. We only
23 include what might be the exception.

24 If a youngster is being supported in special
25 education, instructed primarily in general education,

1 then my -- my belief is that their goals and objectives
2 come from the Core Curriculum Contents Standard.

3 Q So she should -- H.M. should be meeting all
4 the goals and objectives in the Core Curriculum Content
5 Standards for literacy?

6 A If she is with whatever supports are being offered
7 to her. But again, what is -- what is expected of a
8 fifth grader is quite varied from, as I said, 25th to
9 75th percentile. So we're not expecting all children to
10 be on the same page at the same time.

11 Q But the Core Curriculum Content Standards do
12 ~~set up minimum levels of expectation for -- for reading~~
13 fluency, correct?

14 A Correct.

15 Q You -- you testified that of particular note
16 to you is Ms. Woodland's report which is the --

17 A Learning evaluation.

18 Q Learning evaluation. That is --

19 A I don't have a copy of that. I went to my
20 summary.

21 MR. BENTLEY: It's not -- it's not up
22 there?

23 THE WITNESS: No. I have the psychological,
24 but not the learning.

25 BY MS. REISMAN:

1 Q It's exhibit R-31.

2 MR. BENTLEY: I --

3 MS. REISMAN: Oh -- okay. Oh, yeah, yeah,
4 yeah.

5 THE WITNESS: Well --

6 MS. REISMAN: That's -- (laughing) --

7 THE COURT: Are you going to refer to a
8 specific area or --

9 MS. REISMAN: Well, she's testified of
10 particular note -- was the learning assessment.

11 BY MS. REISMAN:

12 Q ~~What in particular in this learning~~
13 assessment was important to you?

14 A Whether -- standardized assessment -- standardized
15 assessment that Ms. Woodland had done.

16 Q That would be the Woodcock-Johnson?

17 A The Woodcock-Johnson Three, test of achievement.

18 Q Okay. Which is a -- and would not tell you
19 anything about reading fluency, correct?

20 A I -- I don't recall if there's anything timed
21 within that. It's a -- it's a complete battery and it
22 may say in Ms. Woodland's report.

23 Q What in particular, besides the Woodcock-
24 Johnson --

25 A Well the Grey Oral Reading Test. I think that was

1 selected specifically because of the question being
2 asked. This was -- this was a -- the instruments were
3 chosen to address the questions and that specifically
4 does, you see that on page five where she's given a
5 series of graded passages and read aloud and then the
6 examiner records the numbers of deviations from print
7 and that made it -- that are made in notes in time in
8 seconds that it takes to read the passage. So we --
9 that goes to fluency, rate and accuracy are derived
10 from this procedure.

11 Q Right. And -- and further down she says,
12 ~~"H.M. experienced difficulty with oral fluency~~
13 ~~accuracy."~~

14 A The paragraph, "Reading sub-tests, received a
15 standard score of eight and eight -- 25 and a grade
16 equivalent score of 5.0."

17 Q Right.

18 A Okay. Because again, the graded passages mean
19 they get more difficult as you go -- as you go along.
20 Am I missing --

21 Q Keep going down. "While H.M. experienced
22 difficulty in -- fluency accuracy."

23 MR. BENTLEY: And the rest of the sentence?

24 BY MS. REESEMAN:

25 Q "-- be impacted." Correct?

1 A Yes.

2 Q But if your oral fluency accuracy is low it's
3 going to take you longer and reading is more laborious,
4 is that right?

5 A I think if you say in general, but yet in -- in
6 whatever -- and this is what we don't understand about
7 individual children is how they compensate for the --
8 the areas. As I said, any -- any of us, any of the
9 weaknesses that we might have. The bottom line was
10 that she was able to read and comprehend.

11 Q Did you review any input from the parents on
12 ~~how long it was taking her to do her homework or how~~
13 long it was taking her to get to read and comprehend?

14 A Yeah. I do recall there was some -- because there
15 was some correspondence in the file from the parents
16 and I -- I could not quote it, but the fact that she's
17 a very motivated, hard-working student who works hard
18 to get the grades that she does. I understand that. I
19 admire that.

20 Q Right. And wouldn't you agree that if it's
21 taking the student three or four hours to do homework
22 that's taking other students a half an hour then
23 there's an educational deficit?

24 MR. BENTLEY: Objection. I see -- I see no
25 foundation for that question.

1 MS. REISMAN: Assuming that the parents --
2 the parents were complaining about the amount of time
3 it was taking H.M. to do her homework.

4 MR. BENTLEY: There -- there's no evidence
5 of that and there's -- that's all --

6 MS. REISMAN: She -- she --

7 MR. BENTLEY: Let me finish my objection.
8 No evidence of that particular state of facts or -- or
9 to the facts on the record. It -- ask this witness
10 about something that the parents may testify to?

11 THE COURT: Well, you're asking the witness
12 if there is that indication somewhere in the record?

13 MS. REISMAN: She said that there was an
14 indication in the record that the parents had concerns
15 about the amount of time it was taking H.M. to do her
16 homework.

17 THE COURT: Okay.

18 MS. REISMAN: I can withdraw the way the
19 question is phrased.

20 THE COURT: Right.

21 MS. REISMAN: And I will phrase it this way.

22 BY MS. REISMAN:

23 Q Isn't -- doesn't -- does the fact that the
24 parents were reporting that it was taking H.M., what
25 they seemed to think was extensive time to complete her

1 homework, doesn't that indicate an educational deficit?

2 A No.

3 MR. BENTLEY: I'm going to object. All we
4 have is -- the witness said she was aware of the
5 parents expressing concern about something. We
6 don't know about what the -- was, what the objective
7 amount was and so the question is unfair.

8 THE COURT: All right.

9 MR. BENTLEY: I think we should ask the
10 witness what her understanding is of what the parents
11 concerns were --

12 ~~THE COURT: Yeah.~~

13 MR. BENTLEY: -- and then go from there.

14 BY MS. REISMAN:

15 Q What's -- what's your understanding of what
16 the parents' concerns were?

17 A Like many parents I think that, you know, kids
18 have different -- parents get concerned when they see
19 their children seated for hours doing their homework.
20 I understand that. I don't know how -- how frequent
21 that was. I don't -- I just recall seeing something in
22 terms of the parents' concern.

23 I find that many children who are high achievers
24 who do well, who earn A's and B's in school do it as a
25 result of a lot of effort. It did not surprise me.

1 Yeah. It happens all the time. Probably all of us
2 have taken a long time to -- not everybody moves very
3 rapidly and quickly through what they do. They work
4 hard for it.

5 Q You stated before that if I had -- if you had
6 a copy of one of your Powerpoints you would be able to
7 speak more about what -- what's expected in fourth,
8 fifth and sixth grade.

9 A Sure.

10 Q H.M. was in fourth and fifth grade during the
11 years in question. She's in sixth grade -- sixth grade
12 now. Would you like a copy of your Powerpoint to

13 refresh your recollection?

14 A No. I think -- I responded to that in terms of
15 how many words -- new words children learn per year.
16 It's astounding. It's astounding how much, you know,
17 and we -- we have lots of research to support that
18 those children, and I was thinking about, you know,
19 children who come from a rich language background who
20 are early kids -- early childhood who were spoken to or
21 talked to, I mean they have a huge advantage because so
22 much of what they learn is based on understanding
23 words.

24 And in this case once they get to be in fourth and
25 fifth and sixth grade they have to read those words,

1 not just, you know, hear them in their conversation
2 with their -- in their home environment or in school.
3 Vocabulary is very important is what I was referring
4 to.

5 Q Isn't it true that's it's difficult to
6 correctly guess the identity of the words with context
7 in fourth, fifth, sixth grade passages?

8 A I don't know that I could say that. Depending --
9 depending upon the word. You know, depending upon your
10 understanding of words -- similar words to it, you
11 know. I couldn't make that generalization.

12 ~~Q Okay. If you said that in a Powerpoint, it~~
13 was a mistake?

14 A No. I'm just saying how many new words, and I did
15 say that if -- if you're in a science lesson, in a
16 social studies lesson, anything more technical that you
17 have to introduce the -- typically the way children are
18 taught is that you introduce new vocabulary words first
19 because they wouldn't have encountered them in their
20 reading, you know, in their -- their reading
21 instruction, you know, things that relate to
22 photosynthesis or whatever it might be, whatever the
23 topic you're teaching.

24 MS. REISMAN: Move to strike. Non-
25 responsive. I asked if she said that in the Powerpoint

1 if it was a mistake.

2 MR. BENTLEY: I'm kinda lost as to --

3 THE WITNESS: I'm lost.

4 MR. BENTLEY: -- the relevancy here but --

5 THE COURT: All right. If that -- if that
6 was the question the response, you're correct, was not
7 responsive and I will not consider it. You can re-ask
8 the question.

9 THE WITNESS: Okay.

10 BY MS. REISMAN:

11 Q If you stated that it's very difficult to
12 ~~correctly the identity of new words just from the~~
13 context of passage in fourth, fifth and sixth grade
14 texts in a Powerpoint, was that an error?

15 A If I said -- I think what I referred to, and I
16 said if I had my Powerpoint here, you said that many
17 new words are introduced 10,000, I believe you used, to
18 students within a year. And I said it is astronomical
19 and that's something that -- that the information that
20 I didn't recall but I would agree with that.

21 Q Okay.

22 A Yes.

23 Q What about the sentence that I just said?

24 A Please repeat that.

25 Q The sentence that I just said was -- I -- if

1 you would like to look at your Powerpoint I have it
2 here. If there's no objection from Mr. Bentley I can
3 let you look at it.

4 A My Powerpoint?

5 MR. BENTLEY: I'm not sure the relevancy,
6 Judge, but --

7 THE WITNESS: I didn't -- I didn't submit a
8 Powerpoint.

9 MS. REISMAN: It's available on the
10 internet.

11 THE WITNESS: Oh, from the National
12 Association of School Psychologists.

13 MS. REISMAN: Yes.

14 THE WITNESS: Okay. Reading Rockets. Okay.

15 MS. REISMAN: Yes.

16 THE WITNESS: Yes, I would like to see it.

17 THE COURT: All right. Show -- show the
18 witness the Powerpoint. If you have the specific
19 passage or --

20 MS. REISMAN: Yes.

21 THE COURT: -- whatever then let's --

22 MS. REISMAN: It's very long. It's on page
23 -- on page seven. I'm just asking about this sentence
24 here on the bottom.

25 THE WITNESS: Okay.

1 MS. REISMAN: Should we mark this for
2 identification? I'm not going to move to --

3 THE COURT: Probably should. Yes. Why
4 don't you mark it was R-30?

5 MS. REISMAN: P --

6 THE COURT: I'm sorry. P -- P-20.

7 (P-20 marked for
8 Identification.)

9 THE WITNESS: Okay.

10 MR. BENTLEY: I'm sorry. Is the witness
11 being asked to read the entire Powerpoint?

12 MS. REISMAN: No.

13 THE COURT: No. No. Just the one --

14 MS. REISMAN: I'm asking her to look at --

15 THE COURT: Page seven.

16 MS. REISMAN: Page seven. Sorry. I didn't
17 give you a copy.

18 THE COURT: And the --

19 BY MS. REISMAN:

20 Q In the middle slide on the second column.

21 A Yes.

22 Q Okay.

23 A This information was -- this was a training that I
24 had done with two other colleagues and as we noted on
25 the -- the first slide there was additional information

1 was from Joseph Torguson (phonetic) and I'm just trying
2 to recall whether this was either my original slide or
3 from Dr. Torguson's.

4 Q Well, do you disagree with the statement?

5 A "State -- correctly guess the identity of these
6 new words just from the contents of the passage." No,
7 I don't disagree with that.

8 Q And I believe this indicates fourth, fifth
9 and sixth graders encounter about 10,000 words they
10 have never seen before during a year's worth of
11 reading?

12 A ~~Yeah. I think it was referring to the previous~~
13 point. If you look at the -- the previous slide which
14 was -- you could read -- if you -- if you just try to
15 actually read that, that -- that it's actually -- you
16 can't even understand that even though there's some
17 non-sensical words written in there.

18 Q Right. This is the slide that says, "These
19 are interesting and challenging-- you can understand
20 that but it takes longer to understand it and it's
21 harder to do because of the way certain words are --"

22 A Yeah. You're using something called the close
23 technique which means you're filling in what -- you
24 have to fill in by nature of -- of your intellectual
25 abilities.

1 THE COURT: All right, Counsel. Let's move
2 on.

3 MS. REISMAN: Okay.

4 BY MS. REISMAN:

5 Q You also testified that the Dibbles is -- it
6 is being used now with fifth graders to assess oral
7 reading and fluency, correct?

8 A Uh hmm.

9 THE COURT: That's a yes?

10 BY MS. REISMAN:

11 Q Yes?

12 A Yes.

13 Q And you testified that really what that's
14 designed -- the Dibbles is designed to plot a line of
15 trajectory, correct?

16 A Yes.

17 Q And that's because the way the DIBELS is used
18 is you assess at the beginning of the year and the end
19 of the year and you see if the student is progressing.
20 Is that correct?

21 A That is correct. You assess at whatever interval.
22 There -- there is no standard method to do that but you
23 typically do it at regular interval -- intervals as you
24 would any other kind of height, weight measurement to
25 see are we moving in the right direction. They use

1 graded passages to do that.

2 But as I mentioned inherent in any kind of
3 curriculum based assessment, which is what DIBELS is,
4 is that you -- we understand that this is a -- a more
5 informal measure. We take -- we do three one minute
6 samples, throw out the top, throw out the bottom and --
7 and go with the middle. Because it can vary with
8 familiarity with words, as we just said, as I just
9 mentioned, or what the text is all about.

10 Q And there is no line of trajectory for H.M.,
11 correct?

12 A ~~I do not see one.~~

13 Q Because there -- you -- you only saw the one
14 assessment, the one --

15 A My recollection was that it was a request that she
16 be -- that DIBELS be -- someone made that request that
17 a -- a DIBELS measure be done. Yet so that we didn't
18 have pre -- we didn't have information before or since.

19 Q Okay.

20 A That I saw.

21 Q So her -- from what you could see there was
22 no criteria -- records -- records on -- for oral
23 reading?

24 A Other than what was built into the reading -- the
25 reading program that was in the classroom. There would

1 naturally be something that I did not -- it would not
2 necessarily be in the file but if you looked at the
3 fifth grade reading program they have to have some way
4 of assessing progress. I mean, that's -- that's good
5 education.

6 Q That would be her grades?

7 A It could be her grades. It could be her -- her
8 tests of -- you know, her -- her unit tests. Whatever
9 the particular measures are that the teacher would do.

10 Q Did you see anything besides her grades that
11 showed any kind of ongoing progress monitor?

12 ~~A Well the thing that when we~~ and I wanted to
13 mention this about Core Curriculum -- the Core
14 Curriculum Content Standards is that the State -- the
15 State Department of Education has developed the New
16 Jersey ASK in order to assess that. Again, that was
17 one other thing that I looked at that she was
18 proficient or, you know, average to above average in
19 areas that she was assessed.

20 Q That's right. If she's taking the ASK under
21 untimed conditions, though, it's not going to tell you
22 anything about her fluency, is it?

23 A No, but it's going to tell me a lot about her
24 overall achievement which is I guess -- and I think the
25 basic difference if I can, and I don't know, Judge, if

1 I can do this, but the basic difference I see is that
2 when I look at a youngster's reading ability it's the
3 overall picture of how well can they read, the
4 component parts to reading. If we don't focus -- if --
5 if we have a competent reader then I don't go back to
6 focus to say is there one area that's still weak
7 because for whatever happens she has compensated for
8 that.

9 Q Do --

10 A I may not be a fluent reader. I may read more
11 slowly. I may work harder. I may, you know, I may be
12 ~~a tremendously fluent reader but I don't comprehend.~~

13 All right. But if the bottom line is I can achieve or
14 I or any youngster can achieve, then we stop looking at
15 individual progress indicators. We say we've achieved
16 a basic level of competency. And we -- as we said we
17 reaped -- the reading -- the learning to read we
18 perceive to reading to learn and grow in our knowledge.

19 Q The Core Curriculum Content Standards for the
20 State of New Jersey specifically state that students
21 will understand and apply the knowledge of sounds,
22 letters and words in written English to become
23 independent and fluent readers?

24 A That's the goal. Sure. Sure. Yes.

25 Q So fluency is part of the Core Curriculum

1 Content Standards?

2 A Yes, but it's by far not the only part.

3 Q Of course it's not the only part, but my
4 question to you was whether the -- taking the New
5 Jersey ASK under untimed conditions would give you
6 information about fluency.

7 A No, but it's not specifically designed just to
8 measure fluency is what I'm saying. There's a bigger
9 picture there when we talk about a group administered
10 paper and pencil standardized test. We can only
11 measure fluency individually when we assess it

12 ~~individually, which would either be through Dibbles,~~
13 the DRA or the Grey Oral Reading Test or many other
14 measures.

15 Q When you say there's a big picture, part of
16 the big picture includes, according to the Core
17 Curriculum Content Standards, fluency?

18 A Sure. And comprehension and many other things.
19 Yes.

20 Q Right.

21 A Yes. I agree.

22 Q When -- when you look at the NJ ASK scores do
23 you consider whether or not they've gone up or
24 declined?

25 A I look to particularly the fourth and the fifth

1 grade levels, which I was the most -- the most current
2 and saw that she was --

3 Q Actually, I believe that the third and fourth
4 were the ones that you looked at.

5 A Let me re-read that then. Whatever it was, the
6 fourth. Okay. What was the fourth was in -- but then
7 I believe I'd have to clarify. I didn't put in my
8 report as referenced by NJS-4 and NJS-5.

9 Q Okay.

10 A It was a report and learning evaluation which is
11 four, but subsequent to that when I was sent the file
12 ~~they had the fifth that was in -- that was new -- new~~

13 data.

14 Q Okay.

15 A Yes.

16 Q So that was -- the team didn't --

17 A No, but they would have had previous. Correct. I
18 don't know what date that they were available. I know
19 that the date that Ms. Woodland had -- she had April 1st
20 and 8th, it's likely that they -- they did not have
21 this.

22 Q Okay. Was there -- was -- do you use NJ ASK
23 -- progress from one year to the next?

24 A No. We look at whether they're making -- whether
25 they're meeting the Core Curriculum Content Standards.

1 Q But it doesn't show progress?

2 A Well, the logic is that as we move along in fourth
3 grade -- what -- what we're expecting with a fourth
4 grader is less than what we're expecting of a fifth
5 grader so she's continued to do at or better because
6 it's a norm referenced test that she's keeping pace
7 with. So yes, it would be progress.

8 Q So she did worse in fifth grade then she
9 would have had a little regression?

10 A Well, it depends on what we -- when you measure,
11 and I'd have to look at the scores and I'd have to look
12 ~~at the standard error of measurement and things like~~
13 that because that's why we talk about ranges and not
14 specific scores.

15 Q Okay.

16 A You know, is she out of the same range because as
17 much as we're able to measure we're not perfect in
18 that.

19 MR. BENTLEY: I'm just amazed that she
20 hasn't --

21 MS. REISMAN: (Laughing.)

22 BY MS. REISMAN:

23 Q Did you speak to anyone from the District who
24 did any of the testing that you reviewed?

25 A No, I did not.

1 MS. REISMAN: Can I have a couple of
2 minutes, Your Honor?

3 THE COURT: Sure.

4 MS. REISMAN: Just to --

5 MR. BENTLEY: A break?

6 THE COURT: Pardon?

7 MR. BENTLEY: Off the record?

8 THE COURT: Off the record, I assume. Off
9 the record?

10 MS. REISMAN: Yes.

11 (BRIEF RECESS)

12 ~~THE COURT: I -- I certainly will -- I'll~~
13 call on it. I did mention it before but we'll see what
14 we can do. Usually, it's off over the weekend and it
15 comes back on on Monday so -- all right. You may
16 continue.

17 MS. REISMAN: Yes, Judge.

18 BY MS. REISMAN:

19 Q I -- exhibit R-13 which was -- is that the
20 assessment you reviewed?

21 A Yes.

22 Q And on this assessment the -- the gray bar is
23 the target goal, correct?

24 A Yes.

25 Q And the -- the scores that H.M. achieved in

1 the February administration of the DIBELS were below
2 the target goal, correct?

3 A It appears so. If the target goal is -- well,
4 it's not a very accurate graph so we have, as I'm
5 reading it, under oral reading fluency fifth grade
6 would correspond to somewhere between 100 and 120, so
7 we could say 110, perhaps.

8 Q Well, actually, if you -- you're right. It
9 is a difficult to read graph. I think if you look at
10 February, fifth grade -- put a piece of paper under-
11 neath where the bottom of that target is you see 120.

12 ~~A Let me look at February. Okay. Yes. And I would~~
13 say in that particular administration she was below.
14 She had, it looked like 107 -- accurately.

15 Q Administration -- her fluency is below the
16 target goal?

17 A By this administration it looked to be. Yes.

18 Q And there are no other administrations?

19 A That's correct. That I saw.

20 Q Okay. In the progress monitoring you
21 reviewed were her report card grades?

22 A Do this -- (shuffling papers) -- what I said in
23 the conclusions were that I looked at her -- at the NJ
24 ASK scores, and as well as throughout the progress
25 monitoring would have been her report card grades, her

1 -- in teacher comments, things that I had gleaned from
2 reports from reading the child study team records.

3 Q So you based your -- your conclusion on the
4 records that had been provided to you by the child
5 study team, not the actual progress reporting that
6 underlay those records?

7 A Right. No, that is not correct. I based my
8 conclusions upon every -- the file was perhaps this
9 thick, so I tried to base my conclusions upon
10 synthesizing all of the information that I felt was
11 relevant. To say that "A" was to "B" that "B," it was

12 ~~it was an overall impression based upon the~~
13 preponderance of the data.

14 Q Okay. And the progress monitoring was then
15 report card grades. And do you recall any other
16 progress monitoring that was in the file?

17 A Well I consider -- any -- any assessment would be,
18 I compared the 2005 to 2008 to looking at her report
19 cards to looking at the NJ ASK scores. You know, I
20 guess it's -- it depends upon how we define progress
21 monitoring. If we look at it as an instrument that is
22 purely designed just to monitor progress then I didn't
23 see any other DIBELS. I only saw one DIBELS at this
24 point in time. There were -- but I would consider the
25 generic progress monitoring to be all of the data all

1 together.

2 Q And that would be the -- the data including
3 just the comments of teachers?

4 A Everything. Teacher comment, test results, group
5 tests, individual tests, norm referenced tests --
6 reference tests.

7 Q Or -- or just comments that have no -- that
8 are not norm referenced or criterion referenced?

9 A Well, part of doing any kind of an assessment or
10 any kind of background -- gathering background
11 information is that we look at, you know, reports from
12 ~~people who have worked with the youngster.~~

13 MS. REISMAN: That's all I have.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION BY MR. BENTLEY:

16 Q Dr. Williams, in the learning assessment, I
17 think it's R-31, I believe you still have that in front
18 of you.

19 A Yes, I do.

20 Q You were asked some questions regarding the
21 test for reading fluency that's on page five.

22 A And I'm sorry. What was --

23 Q I'm sorry. The test for reading fluency.

24 A Okay.

25 Q You testified about that.

1 A Oh, the Grey Oral Reading?

2 Q Right. And I believe you said that was the
3 result -- the result of that test which were in the
4 average range. Do you -- do you -- and based upon your
5 understanding of that test and how it was administered,
6 was that a timed test?

7 A It would have been, and as reported here because
8 it was -- it was measuring what the issue as it appears
9 to be which is reading fluency, the rate and accuracy.
10 And as it was explained it said that it was based on
11 her reading -- H.M. reading out loud and noting the
12 ~~time and seconds that it takes her to read a passage.~~

13 Q Right. And on page four of the assess -- of
14 R-31 there's a -- there's a reading fluency subtest
15 within the --

16 A Woodcock-Johnson.

17 Q Woodcock-Johnson. Is that correct?

18 A Yes.

19 Q Do you know of, and based upon the results of
20 -- from the learning assessment, what were H.M.'s
21 results, what were her scores for the reading fluency
22 subtest for --

23 A Well --

24 Q -- the Woodcock-Johnson?

25 A Okay. The reading fluency test has a standard

1 score of 106 and the -- then range, the confidence
2 intervals, would be 99 to 113 which would be a
3 percentile rank of 66 which would be average.

4 Q So she's average in read -- reading fluency?

5 A Based on these two measures, yeah.

6 Q Is there any other standardized test scores
7 which indicates that there is a severe discrepancy
8 regarding reading fluency for H.M.?

9 A Not that I saw. Standardized test. No.

10 Q And are you aware of the reasons why the --
11 the DRA, the second DRA that was administered, I think
12 that is R-13. I know we always get -- we always mix
13 these things up, us attorneys.

14 A Here's one.

15 Q Okay.

16 A One is -- and that -- right.

17 Q Okay. I said R-13. I misspoke. R-11.

18 A Eleven.

19 Q Okay. Do you -- are you aware of the reasons
20 why Brenda Baals elected to go forward with the -- with
21 testing, the DRA in R-11?

22 A I -- I don't know. I didn't ask her. I have not
23 spoken to her, but I can tell you that again in --

24 MS. REISMAN: Objection. She's going to --
25 she said she doesn't know.

1 THE COURT: Well -- do you -- do you know or
2 do you know why she decided to go ahead?

3 THE WITNESS: No, I don't know.

4 THE COURT: Okay. Next question.

5 BY MR. BENTLEY:

6 Q Next question. Do you know who Brenda Baals
7 is?

8 A According to this she is a special education
9 teacher.

10 Q Would it be -- would it be appropriate for a
11 special education teacher who -- who has said she knows
12 ~~H.M. and has said that there's no way H.M.'s~~

13 independent reading was at a second grade reading
14 level, to use that as a reason for going forward with
15 the DRA?

16 A I might have myself done that if I didn't feel
17 like this was -- the results purely reflected -- you
18 know, you can typically do one of two things. You can
19 continue on to, as I mentioned earlier, to test the
20 limits or you could redo at another time. Again, these
21 are just indicators of one moment in time.

22 Q Okay. All right. So given the fact that you
23 had this particular student and knew her independent
24 reading level was much higher based upon working with
25 that student, would you feel comfortable in moving

1 forward beyond the DRA's explicit instructions?

2 MS. REISMAN: Objection to the form of the
3 question. There -- there is no -- that Ms. Baals had
4 known H.M. for approximately one month at that time,
5 knew her in any intimate way that would -- I mean,
6 there's just no testimony to support the foundation of
7 that sentence.

8 MR. BENTLEY: I believe that's incorrect.
9 I believe she has only worked with her for I think
10 about a month, that is true. She also testified that
11 given that month she is well aware of what H.M.'s
12 ~~reading levels are. In fact, she said there was no way~~
13 she was being -- her instructional level was at second
14 grade so that's why she questioned the results of the
15 DRA and that's why she made the decision to move
16 forward.

17 MS. REISMAN: This witness also --

18 THE COURT: Well --

19 MS. REISMAN: -- said she's not a reading
20 specialist and we're -- we're asking about, you know,
21 administration of a particular reading assessment.

22 MR. BENTLEY: Well, then --

23 THE COURT: Well, wait -- wait, Counsel.

24 MR. BENTLEY: The rest of the questions
25 then should be stricken from the record. If Counsel

1 spent about an hour, hour and a half asking her
2 questions about the DRA and DIBELS, and now she's
3 saying she's not a reading specialist, and then I get
4 to ask her a question that she doesn't like the answer
5 to, now she says she shouldn't answer the question.

6 THE COURT: Counsel, first of all, let's do
7 it this way. Ms. Baals' testimony stands on its own,
8 speaks for herself. My recollection is somewhat in
9 accordance with yours. I'm going to have to look at my
10 notes to do that, number one. Number two, this witness
11 I think has expressed her opinion previously on this
12 whole -- ~~this whole area. I don't think it's necessary~~
13 to get further involved with it.

14 MR. BENTLEY: Okay.

15 THE COURT: And third, your motion to strike
16 is denied.

17 MR. BENTLEY: Okay. Big surprise there.
18 (Laughing.) All right. Nothing further, Judge.

19 THE COURT: Anything else for the witness?

20 MS. REISMAN: No.

21 THE COURT: Thank you, Doctor. You can step
22 down. You're free to go.

23 THE WITNESS: And do I leave these things
24 here and let you sort them out or --

25 THE COURT: Unless there's any of your --

1 anything of yours there.

2 THE WITNESS: No.

3 THE COURT: Just leave them there.

4 THE WITNESS: Okay.

5 THE COURT: The attorneys have a way of
6 sorting things -- sorting through things.

7 MR. BENTLEY: We have a way of stealing
8 things. (Laughing.)

9 THE COURT: (Laughing.) Yeah. Well, that
10 too.

11 MR. BENTLEY: Losing them.

12 ~~THE COURT: It's now 12:00 noon. Should we~~
13 take our lunch recess now?

14 MR. BENTLEY: Yes.

15 MS. REISMAN: That sounds --

16 THE COURT: All right. We'll come back
17 1:00?

18 MR. BENTLEY: Yes.

19 THE COURT: Or thereabouts. Okay. See you
20 at 1:00.

21 (BRIEF RECESS)

22 THE COURT: Okay. We're back on the record.
23 All right. Counsel, we had a brief discussion. I have
24 to indicate what we briefly discussed, the witness
25 order -- the order of witnesses being called. And

1 Counsel may reach some agreement on that during the
2 recess of this matter or by the next time -- the next
3 session. So in the meantime if you would call your
4 next witness.

5 MR. BENTLEY: Jane Elfreth, please.

6 MS. REISMAN: I would like -- to --
7 testimony.

8 THE COURT: You -- you can come up. Request
9 for an offer of proof concerning the testimony that's
10 being elicited.

11 MR. BENTLEY: Yes, Your Honor. Jane -- is
12 ~~the specialist employed at Haddon Heights Atlantic~~
13 Avenue School. She had a -- some involvement in the
14 administration of the DRA, the second DRA that we heard
15 testimony about regarding conversations that she had
16 with Brenda Baals about that. Obviously, I'm going to
17 ask her about that. But the primary focus of her
18 testimony will be the types of services that can be
19 provided to someone like H.M. in the general ed
20 curriculum.

21 There's always a concern in these particular
22 cases and I think Dr. Williams addressed it briefly in
23 her examination as well as in her report that after a
24 decision is made to declassify a student, what happens?
25 Will she be -- is there any type of services that can

1 be provided in -- in general education? And the tests,
2 as you know, for determining eligibility is do you need
3 special education services, special -- services to be
4 able to advance in a general ed curriculum?

5 This witness is -- is being offered to -- to
6 let the Judge know what type of services will be
7 provided to -- to H.M. in the general ed setting if you
8 -- if -- if the Court agrees with our determination of
9 -- of not being eligible for special education. So she
10 is here as a reading specialist at the Atlantic Avenue
11 School offering testimony to you as to what types of --
12 ~~of supports and so forth that would be -- that would be~~
13 available to H.M.

14 MS. REISMAN: And our response is that the
15 -- obviously the testimony regarding Ms. Baals -- DRA
16 -- but the question of whether a student is eligible
17 for special education services is -- is not dependent
18 upon what the District has in its general education
19 program. It's irrelevant to the issue here and that I
20 don't -- I don't see any relevance to the issue at
21 hand.

22 THE COURT: Yeah. I tend to agree with
23 that. I mean, if someone is -- is -- requires special
24 education and related services the fact that they may
25 get those same services outside of special education is

1 not relevant. I -- so I -- I don't know why that would
2 be of any interest to --

3 MR. BENTLEY: Just -- just to -- if -- if
4 the Court had any kind of concerns as to whether or not
5 H.M. would be left with no supports whatsoever, that's
6 why we're offering -- again, a reading specialist
7 employed at the District in that particular school
8 working with general education kids. The offer of
9 proof would be that this is what would be provided if
10 she does have some -- any type of other needs.

11 If the Judge doesn't feel it's necessary --
12 ~~determination is -- we can --~~

13 THE COURT: I'm trying -- I suppose to say
14 it a different way is if certain kinds of services are
15 provided to regular education students as a matter of
16 course, that those should not be considered special
17 education services. But I -- I don't know. I'm -- I
18 just don't know that this would have any kind of impact
19 on my determination of the -- of H.M.'s eligibility for
20 special education services.

21 MR. BENTLEY: Can I have one second?

22 THE COURT: Sure.

23 MR. BENTLEY: Okay. Whatever your ruling
24 is, Judge.

25 THE COURT: Yeah. My ruling is it's

1 irrelevant.

2 MR. BENTLEY: Okay. And I'll --

3 THE COURT: But you may proceed.

4 MR. BENTLEY: I'll be a lot brief than it
5 was. Okay. All right. (Laughing.)

6 THE COURT: To the side of benefit or
7 detriment, I'm not sure which but --

8 MR. BENTLEY: (Laughing.)

9 MS. REISMAN: (Laughing.)

10 MR. BENTLEY: In this case it's kind of a
11 benefit I guess.

12 ~~THE COURT: All right.~~

13 MR. BENTLEY: The -- of --

14 THE COURT: Let me have the witness sworn.
15 If you could raise your right hand to be sworn.

16 J A Y N E E L F R E T H, RESPONDENT'S WITNESS, SWORN

17 THE COURT: And your full name, please?

18 THE WITNESS: Jayne Elfreth.

19 THE COURT: And the spelling of your last
20 name?

21 THE WITNESS: E-L -- "F" as in "Frank" --
22 R-E-T-H.

23 THE COURT: Thank you, ma'am.

24 THE WITNESS: And if I may add Jayne is
25 spelled J-A-Y-N-E.

1 THE COURT: Oh, thank you.

2 MR. BENTLEY: I didn't know that.

3 THE WITNESS: (Laughing.)

4 MR. BENTLEY: Thank you.

5 DIRECT EXAMINATION BY MR. BENTLEY:

6 Q Ms. Elfreth, good afternoon.

7 A Good afternoon.

8 Q Who are you employed by?

9 A The Haddon Heights Board of Education.

10 Q In what capacity?

11 A As a reading specialist.

12 Q And when were you hired as a reading
13 specialist?

14 A I was hired in December of 2006. I'm thinking.
15 It's been like a year and a half.

16 Q A year and a half? Okay. Okay. Are you
17 assigned to a particular school or are you a reading
18 specialist throughout the district? What exactly are
19 your duties?

20 A Right now I'm assigned to Atlantic Avenue School.

21 Q That the school where H.M.'s a student at?

22 A Yes.

23 Q And have you been assigned to the Atlantic
24 Avenue School exclusively since December of 2006?

25 A Yes.

1 Q And what are your normal duties and so forth
2 as a reading specialist?

3 A Right now I am considered literacy support for
4 students in grades one through six as well as assisting
5 classroom teachers in the administration of a balanced
6 literacy program.

7 Q And what is a balanced literacy -- is it
8 balanced literacy --

9 A Approach.

10 Q What is balanced literacy?

11 A Balanced literacy is addressing all aspects of
12 ~~reading including reading and writing through Reader's~~
13 Workshop and Writer's Workshop.

14 Q And that is -- that's what's in place at the
15 Atlantic Avenue School --

16 A Yes.

17 Q -- at the present time? Okay. What is --
18 what is your certifications?

19 A I have a masters in reading and writing from Rider
20 University along with a New Jersey certificate of
21 reading -- in reading -- as a reading specialist.

22 Q And briefly what is your employment history
23 within Haddon Heights?

24 A This is my 26th year of employment in Haddon
25 Heights. The previous 23 were in instrumental music in

1 grades four, five and six.

2 Q When did you get your masters in reading and
3 writing?

4 A In May of 2007 it -- well, I graduated, actually,
5 in December, December of 2006.

6 Q Okay. What --

7 A Ceremony was in May of 2007.

8 Q Okay. Was there any type of reading
9 specialist for Atlantic Avenue School before you were
10 hired?

11 A No.

12 Q I'm going to draw your attention to a -- a
13 DRA. First of all, have you ever assessed H.M. or ever
14 had any type of assessment of her?

15 A Yes.

16 Q What -- in what capacity?

17 A I assessed her this year in the administration of
18 the QRI.

19 Q Did you administer any other tests of her in
20 fifth grade?

21 A No.

22 Q Okay. What's the QRI?

23 A It's called a Qualitative Reading Inventory and
24 it's assessment of -- right now it's a -- it's a multi-
25 assessment, but we are using it in Haddon Heights for

1 -- trying to understand where students read at what
2 grade level in regards to comprehension.

3 Q And what were the results of H.M.'s
4 assessment?

5 MS. REISMAN: Objection. This assessment
6 occurred this school year and we've had objection from
7 the other side to events that occurred after the team
8 made its decision. This -- this wasn't the basis of
9 the team's decision for the 2008/2009 school year.

10 MR. BENTLEY: But there's been -- sorry.

11 THE COURT: Go ahead.

12 ~~MR. BENTLEY: There's been evidence~~
13 questions on cross examination of my expert witness of
14 things that may have happened in sixth grade.

15 MS. REISMAN: The -- the parents haven't
16 even seen copies of the results of this assessment.
17 It's -- it's --

18 MR. BENTLEY: But I'm sure they know --

19 THE COURT: 2008.

20 MR. BENTLEY: I'm sure they know what the
21 results are and that's why they don't want the Judge to
22 know what they are.

23 MS. REISMAN: Actually, we don't know.

24 (Laughing.) It's not that we don't want the Judge to
25 know what they are, it's that this is not something

1 that the team had at the time it made its decision.

2 THE COURT: You know, the usual -- the usual
3 type of case that I have is one where there is -- a
4 child is placed in an educational program and I'm to be
5 asked to decide whether a specific IEP is appropriate
6 and -- and usually after events had -- after the fact
7 are allowed in because it's important to the child's
8 interests -- in the best interests of the child to
9 determine really what is -- you know, what the proper
10 determination should be.

11 This is different, though. This is a
12 ~~determination that was made at a point in time that~~
13 H.M. is not qualified or not eligible for special
14 education and related services. I'm not sure that it
15 would be fair to consider after -- events that occurred
16 after the fact. And to the extent that this is a test
17 that occurred after the fact I'm going to -- going to
18 exclude it.

19 BY MR. BENTLEY:

20 Q Ms. Elfreth, were you involved in a -- a DRA
21 assessment of H.M. back in --

22 A Did I administer one, are you asking?

23 Q Were you involved in -- in any capacity?

24 A Yes.

25 Q Okay. In what -- in what capacity?

1 A Ms. Baals approached me showing me the assessment
2 that was -- the DRA, I should say, that was given by
3 another teacher -- that was given to H.M. by another
4 teacher and Ms. Baals was upset by it since she felt
5 that that was not a true assessment of what H.M. could
6 do or how she could do.

7 Q Okay. What, if anything, did you do in --
8 Brenda Baals coming to you? Also, did she say why she
9 was coming to you?

10 A Because I'm the reading specialist in the building
11 and she felt that I may know -- I may be able to direct
12 her in -- you know, as to -- regarding her concerns.

13 Q Okay. And did you offer direction to Ms.
14 Baals regarding her concerns?

15 A I did.

16 Q And what did you tell her?

17 A I asked her first what her feelings were as far --
18 before I -- I directed her I asked her why she was
19 concerned about the results and she said that she felt
20 that that particular assessment that H.M. although may
21 have had oral reading fluency issues, that
22 comprehension wise she did not believe, due to her work
23 with H.M., that that was a true assessment as to where
24 she was reading.

25 So I questioned her further and I said may I ask

1 you how you would know, what -- what types of methods
2 were you coming to me with. And she said well I know
3 that she is reading books on her grade level and that
4 she, Ms. Baals, has also read them and has had
5 conversations with H.M. in regard to vocabulary in the
6 book as well as in regard to matter within the book,
7 meaning, and she said she really felt that that DRA was
8 not a true assessment.

9 At that point I suggested that she re-administer
10 the DRA, which is not unusual to do, to see whether or
11 not that -- the results were the same or different.

12 ~~Q Were you aware that the DRA in its -- in its~~
13 instructs tells the test giver to stop at a certain
14 point in time when --

15 A Yes.

16 Q -- certain miscues are generated?

17 A Yes.

18 Q Are you aware of that? Have you administered
19 the DRA?

20 A Yes.

21 Q What did you advise Ms. Baals regarding
22 stopping or not stopping at a particular point?

23 A I advised her to go on because I felt that she
24 really knew her student more than one assessment in a
25 matter of time -- at a point in time.

1 Q Did you -- were you aware that DRA results
2 that were delivered -- were administered by Brenda
3 Baals?

4 A Yes.

5 Q Did you have a chance to talk to either Mom
6 or Dad about the results of that DRA?

7 A Yes.

8 Q The second -- the second --

9 A Yes.

10 Q Okay. Tell us about that.

11 A I believe that I spoke with Mr. M. in regard to
12 ~~his concerns with H.M. and her oral reading fluency and~~
13 that we spoke at length about what is the point to
14 reading and the fact that oral reading fluency in a
15 student of the fifth grade, actually the fourth, fifth
16 or sixth grade on up level is, even though it is -- I'm
17 trying to think of the word. Even though it may cause
18 H.M. -- even though H.M. may have difficulty in it, the
19 true point to make -- to reading is to make meaning and
20 that H.M. has demonstrated that she can make meaning
21 through what she reads.

22 I also suggested that, in our conversation, that
23 it is very rare for students in fourth grade on up
24 through adulthood to read anything orally without
25 having time to rehearse it. If they are asked to

1 perform in some manner that they would have time to
2 rehearse it. And I suggested reading, you know, going
3 over different plays and whatnot at home to be able to
4 -- to encourage growth in that area.

5 MR. BENTLEY: Nothing further, Judge.
6 Thank you.

7 THE COURT: Cross.

8 THE WITNESS: You're welcome.

9 THE COURT: Cross examine.

10 CROSS EXAMINATION BY MS. REISMAN:

11 Q When Ms. Baals came to you it was prior to
12 ~~January 22nd of -- of this year, prior to her~~
13 administration of DRA?

14 A Prior to Ms. Baals' administration?

15 Q Yes.

16 A Yes.

17 Q Okay. So it was -- is R-11 up there?
18 Exhibit R-11.

19 THE COURT: What is it? The -- the --

20 MS. REISMAN: It's the DRA.

21 THE WITNESS: Yes.

22 THE COURT: It should be. Yes.

23 BY MS. REISMAN:

24 Q And that was -- that was administered on
25 January 22, 2008, correct?

1 A Yes.

2 Q Okay. At that point in time you had not
3 worked with H.M., correct?

4 A That's correct.

5 Q Okay. And you were relying upon what Ms.
6 Baals told you regarding this -- her student, what she
7 knew about the student, correct?

8 A When you say that I was relying on --

9 Q Well, I believe, unless I misunderstood your
10 testimony, you -- you said that she came to you because
11 she was concerned about the results of -- of the first
12 ~~administration of the DRA and you -- you felt that as a~~
13 ~~person who knew the student that her -- that she -- her~~
14 ~~concerns should be addressed. I -- I believe that's~~
15 ~~what you said.~~

16 A I also looked at the copy of the -- the first DRA
17 that was given, not by Ms. Baals.

18 Q Okay. Did you see problems with the first
19 DRA?

20 A I saw problems in the area of oral reading
21 fluency.

22 Q That you saw that H.M. exhibited problems in
23 the area of oral reading fluency?

24 A According to the DRA it looked that way.

25 Q Okay. And I believe you testified that one

1 of Ms. Baals' concerns was that H.M. was reading books
2 at her grade level and was comprehending, correct?

3 A From what Ms. Baals told me H.M. was reading books
4 on her grade level and comprehending. Yes.

5 Q Do you know or did you ask the parents if
6 H.M. was using books on tape at all during the fifth
7 grade year to assist her in comprehension?

8 A On her independent reading books?

9 Q Yes.

10 A Did I ask the parent? No.

11 Q Okay. So you don't know whether she was or
12 not?

13 A That's correct. I do not know.

14 Q Would it affect your determination regarding
15 whether she has a reading problem if you knew that she
16 was using --

17 MR. BENTLEY: Objection. There has been no
18 testimony regarding her conclusions of the reading
19 problem. All she said was she -- Brenda Baals to do on
20 the DRA, re-administer the test.

21 MS. REISMAN: I'll -- I'll withdraw the
22 question.

23 THE COURT: Okay.

24 BY MS. REISMAN:

25 Q And when you told Ms. Baals to re-administer

1 the test you told her not to follow the instructions on
2 the test?

3 A I didn't tell her to not follow the instructions.
4 The DRA does -- is not a standardized test form and
5 there are times in my training that I was told that not
6 -- that you can certainly re-administer if you felt
7 that the first test was invalid.

8 Q Okay. Could you turn to page -- the second
9 page of R-11 and look at the bottom of the page?

10 A Okay.

11 Q And there's a place where the person
12 ~~administering the test is to circle the number of~~
13 miscues and she circled, "12 or more," and if you go to
14 the next page and the teacher analysis of oral reading
15 it indicates the number of miscues that are not self-
16 corrected were "22." Correct?

17 A Yes.

18 Q And self-corrected were "6?"

19 A Yes.

20 Q Okay. And turning back to the -- to the
21 second page, that -- that clearly falls within the area
22 of "12 or more," correct?

23 A Yes.

24 Q Miscues -- okay. Now underneath that it
25 states, "The student score -- if a student's score

1 falls in one or both of the shaded areas above stop
2 this assessment and reassess with the lower DRA text
3 level at another time." Did you tell Ms. Baals not to
4 follow that direction on this test?

5 A Did I say, "Do not follow this?"

6 Q Yes.

7 A No.

8 Q Okay. Did you tell her that she should
9 follow the directions of the people who wrote the test?

10 A No.

11 Q Okay. Did you give her any guidance on
12 ~~whether or not she should follow the directions related~~
13 to the number of miscues on the test?

14 A We talked about the fact that the -- that it says
15 in here that when you get to a certain number of
16 miscues as it does, at the very bottom of the page, to
17 stop the assessment. We talked about that. Yes. But
18 I said to her that in some cases if you really feel, if
19 a teacher, the professional teacher, really feels that
20 that is not an adequate assessment for the one time
21 administration by a teacher who was not H.M.'s teacher
22 also that I would, as a professional, I would encourage
23 her to re-administer.

24 Q When you say, "Re-admin --

25 A Give another --

1 Q But she didn't re-administer, she continued
2 with the test.

3 A Well, when I say, "re-administer," I mean, "Do not
4 stop with this one."

5 Q Okay. So you told her that notwithstanding
6 the instructions on the -- the form of the test itself,
7 that she should continue in spite of the number of
8 miscues?

9 A Yes. Because miscues are one portion of this
10 particular assessment.

11 Q Right. They're the portion that measures
12 fluency?

13 A Yes.

14 Q And there's a portion that measures
15 comprehension?

16 A Correct.

17 Q Okay. And so if you ignore the miscues then
18 you -- you get information about comprehension in spite
19 of miscues, correct?

20 A Correct.

21 Q But you don't get information about fluency?

22 A Correct.

23 Q Okay. Are you aware that the Core Curriculum
24 Content Standards for the State of New Jersey require
25 that students read independently for comprehension as

1 -- and also fluent --

2 MR. BENTLEY: Objection. Beyond the scope
3 of cross. The witness is offered for a very limited
4 purpose.

5 THE COURT: Yeah. What?

6 MR. BENTLEY: We -- we went down this road
7 before about the Core Curriculum Content Standards. I
8 don't know we need it from this witness.

9 THE COURT: Yeah. What's --

10 MS. REISMAN: Okay. That's fine.

11 THE COURT: Yeah.

12 BY MS. REISMAN:

13 Q And when you said the advice you gave to Ms.
14 Baals it's -- her professional opinion as the teacher
15 who knew H.M., do you know how long she had known H.M.
16 at the time that she came -- that she came to you
17 regarding the administration of the DRA?

18 A I don't know number of days, what I know is that
19 she met with her everyday that she was employed by our
20 District in regard to H.M.'s education.

21 Q Do you know when she became employed by your
22 district?

23 A I don't really.

24 MS. REISMAN: That's all I have.

25 THE COURT: Any redirect?

1 MR. BENTLEY: No, Your Honor.

2 THE COURT: Thank you, ma'am.

3 THE WITNESS: Thank you.

4 THE COURT: You may step down.

5 MR. BENTLEY: Can we go off the record?

6 THE COURT: Sure.

7 (BRIEF RECESS)

8 THE COURT: Okay.

9 MR. BENTLEY: Okay. George Rafferty.

10 THE COURT: Good afternoon, Mr. Rafferty.

11 THE WITNESS: Good afternoon.

12 ~~THE COURT: You can please -- please raise~~

13 your right hand to be sworn.

14 G E O R G E R A F F E R T Y, RESPONDENT'S WITNESS,

15 SWORN

16 THE COURT: You may be seated and please
17 state your full name for the record.

18 THE WITNESS: George Rafferty.

19 THE COURT: The spelling of your last name.

20 THE WITNESS: R-A-F-F-E-R-T-Y

21 THE COURT: Thank you, sir. Counsel, you
22 may proceed.

23 DIRECT EXAMINATION BY MR. BENTLEY:

24 Q Mr. Rafferty, who are you employed by?

25 A Haddon Heights School District.

1 Q In what capacity?

2 A Director of special education.

3 Q And how long have you held that title?

4 A For approximately seven months. Since March 2008.

5 Q Welcome to the fire. (Laughing.) Briefly,
6 your educational background?

7 A I have a bachelors of -- I have a bachelors of
8 arts degree in special education with a double major in
9 academic psychology. I also have an associates degree
10 from Hanuman University and an associates degree in
11 science.

12 ~~Q And your certifications? Is that it?~~

13 A I did my graduate work at Rowan University and I
14 took some graduate coursework at Temple University. I
15 earned a master of arts in school psychology and
16 subsequently went on and earned an education specialist
17 degree with a specialty in school psychology as well.

18 Q Okay. I take it you've been a school
19 psychologist before you became the director at Haddon
20 Heights?

21 A Yes.

22 Q In what -- what district and for how long?

23 A I was hired as a school psychologist with the
24 Pennsauken School District for approximately four
25 years. I worked at their high school and case managed

1 students as a child study team case manager.

2 Q How long have you been a member of the child
3 study team?

4 A Actually, an actual member of the child study team
5 I functioned as my role as a school psychologist at the
6 Pennsauken High School.

7 Q Okay.

8 A I've been overseeing and supervising child study
9 teams for approximately eight years.

10 Q Your -- you may have touched upon this but
11 your certifications are New Jersey certifications or --

12 A I hold New Jersey certifications in teacher of the
13 handicapped, elementary school teacher, school
14 psychologist, student personnel services, supervisor,
15 principal and school administrator.

16 Q I should have asked you which ones you don't
17 have.

18 A (Laughing.)

19 Q It's a lot easier to take notes but okay.

20 A I think I got them all.

21 Q Thank you. (Laughing.)

22 A I'm also a nationally certified school
23 psychologist as well.

24 Q Okay. I have just -- just one -- of
25 questions. I think you came on board you said at

1 Haddon Heights at what time?

2 A Actually, my official first day was March 10,
3 2008.

4 Q Did you have any personal involvement in the
5 decision by the child study team to -- that H.M. was
6 not eligible for special education?

7 A Personal involvement?

8 Q Yes.

9 A In terms of just overseeing their activities or --
10 I had --

11 Q Yeah. Sure.

12 A ~~I had no involvement in the decision.~~

13 Q Okay.

14 A To --

15 Q That -- that was my question. Were you
16 involved in -- did you tell them what to say, what not
17 to say?

18 A No, I do not.

19 Q Okay. Were you involved in a -- strike that.

20 MR. BENTLEY: This is going to be R-34?

21 THE COURT: R-35.

22 MR. BENTLEY: R-35?

23 THE COURT: Yes.

24 (R-35 marked for
25 Identification.)

1 BY MR. BENTLEY:

2 Q Mr. Rafferty, I'm going to show you a
3 document that was marked R-35 for identification for
4 the record. June -- June 16, 2008 letter to Mr. and
5 Mrs. M. Take a look at it, please. Is that your
6 letter, sir?

7 A Yes.

8 Q Okay. Your signature is that the second
9 page?

10 A Correct.

11 MR. BENTLEY: I'd like to move R-35 in
12 evidence.

13 THE COURT: Any objection?

14 MS. REISMAN: No objection.

15 THE COURT: R-35 in evidence.

16 (R-35 received in
17 Evidence.)

18 MR. BENTLEY: And -- I'm sorry. Do you
19 have a copy, Judge? Did I give you a copy?

20 THE COURT: No. No.

21 MR. BENTLEY: Sorry. Okay.

22 THE COURT: Thank you.

23 BY MR. BENTLEY:

24 Q Mr. Rafferty, tell us the circumstances as to
25 why R-35 was written to the M.'s?

1 A Well, we had -- we had received a report, as
2 indicated in the letter, conducted at St. Joe's
3 University's reading clinic. This report was provided
4 to the Department and we were asked as to whether the
5 results of that report had changed -- would change the
6 child study team's determination to find the student
7 ineligible for special education.

8 Q Okay. Did you share the St. Joe's report of
9 -- by Ms. Caitlin Westcott with the team?

10 A Yes, I did.

11 Q Did you have any conversations with the team
12 as to whether or not that particular report would
13 change the eligibility determination?

14 A Yes. I asked them to review -- review the report
15 and its results and to consider it in light of their
16 decision made on May 14th.

17 Q Okay. And did you have a chance to review
18 the report yourself?

19 A Yes.

20 Q Okay. The letter speaks for itself in that
21 it does not change the eligibility determination, I
22 mean the St. Joe's report. Is there a reason why?

23 A Well, the -- the -- the child study team felt and
24 I concurred that the results were not inconsistent with
25 what we had seen across the board in -- in evaluating

1 the student. They were not contradictory or compelling
2 enough to -- to warrant finding the -- the student
3 would then now become eligible for special education
4 and reverse the determination that they had made
5 previously.

6 Q Okay. I know you didn't memorize the St.
7 Joseph's report but maybe you could recall anything
8 today that stood out in your mind as to why it did not
9 generate a reassessment or a re-look at the decision of
10 eligibility?

11 A Well, from what I can recall the -- the test --
12 ~~the test -- the report was several pages long. In~~
13 reviewing those pages and going to the summary section
14 of that report the evaluator had indicated that
15 overall, given the evaluation that they had conducted,
16 that the student could benefit from instruction at the
17 fifth grade level. And being that the student was in
18 fifth grade at that time we felt that that indicated
19 she continued to fall within a range that was
20 acceptable for a student of her grade level in her
21 grade.

22 MR. BENTLEY: Okay. Nothing further,
23 Judge.

24 THE COURT: Just a minute. All right.
25 Cross.

1 MS. REISMAN: What?

2 MR. BENTLEY: He's cold.

3 MS. REISMAN: He's cold. Oh.

4 THE COURT: We can -- we can move somewhere
5 else but I think it's probably too --

6 UNIDENTIFIED MALE VOICE: No, no, I'm fine.

7 MR. BENTLEY: Can't make -- he's cold.

8 MS. REISMAN: Let me mark this. What number
9 are we up to?

10 THE COURT: P -- the next is 21. P-21.

11 (P-21 marked for
12 Identification.)

13 MS. REISMAN: (Coughing.)

14 MR. BENTLEY: This is --

15 MS. REISMAN: This -- this document -- the
16 letter.

17 MR. BENTLEY: Okay.

18 MS. REISMAN: (Coughing.)

19 CROSS EXAMINATION BY MS. REISMAN:

20 Q Mr. Rafferty, could you read P-21, please?

21 A Yes.

22 MR. BENTLEY: Would you like him to read
23 the entire thing or just --

24 THE COURT: No.

25 MS. REISMAN: No. But I'm asking him --

1 give him a chance to -- read to ask a question.

2 THE WITNESS: Just the report? It looks
3 like there's several pages of parent interview and --

4 BY MS. REISMAN:

5 Q Right. That was -- is this what was provided
6 to you in --

7 A No.

8 Q -- May of --

9 A Just the report.

10 Q Just the report.

11 A Just the report.

12 Q Just the

13 A Everything up to where we get to "Parent/Guardian
14 Interview."

15 Q Okay. So --

16 A But I have the report.

17 Q You did have the report?

18 A Yes.

19 Q Okay. So we -- the last --

20 THE COURT: Just have him disregard it.

21 THE WITNESS: Okay.

22 BY MS. REISMAN:

23 Q Just disregard that part. Okay. And you
24 reviewed the entire report as -- and -- on or after May
25 30, 2008?

1 A Yes, I did.

2 Q Okay. And turning to -- just to clarify for
3 the record. So P-21 is the St. Joseph's report that
4 we've been hearing testimony about today. This is the
5 report that everyone's been referring to, correct?

6 A Yes.

7 Q Okay. On page four if you look at the top of
8 the page it indicates that "H.M. attained an
9 instructional level, the highest level which she can
10 benefit from guided reading at the fifth grade level."
11 Correct?

12 A Yes.

13 Q And then it goes on to state that "Her
14 strength and text based comprehension contributed
15 greatly to her overall -- score." Is that right?

16 A Yes, I see that.

17 Q Okay. And then it -- it discusses some of
18 the other results. And then at the last few sentences
19 of that paragraph, "It is clear that as she is placed
20 in a classroom that -- text based comprehension she
21 would perform at her grade level. However, if she was
22 expected to demonstrate strength and higher level
23 thinking performance indicates that she may have
24 considerable difficulty and need extensive explicit
25 instruction and higher level thinking strategies at the

1 fifth grade level." Does --

2 A Yes, I see --

3 Q Did you --

4 A I see that. Yes.

5 Q Did the team discuss that finding?

6 A We -- the -- the team reviewed the report and --
7 and considered what was in it. We didn't discuss that
8 -- that particular finding specifically or explicitly.

9 Q Okay.

10 MR. BENTLEY: I'm sorry, Judge. Finding
11 that she's at a fifth grade level? Is that the
12 conclusion or --

13 MS. REISMAN: No. The finding that she's
14 --

15 MR. BENTLEY: -- or the last sentence that
16 you read? Because I didn't know what it was --

17 MS. REISMAN: The finding that if she is
18 expected that she will have -- that she may have
19 considerable difficulty and need extensive explicit
20 instruction and higher level thinking strategies at the
21 fifth grade level.

22 MR. BENTLEY: Okay.

23 BY MS. REISMAN:

24 Q Now at the -- the recommendations, the -- the
25 part that you cited was that "H.M. would benefit from

1 instruction at the fifth grade level." Correct?

2 A Yes.

3 Q The -- the sentence actually reads "-- that
4 makes use of strong pre-reading focusing on the
5 development of story structure -- to the high level of
6 -- which serve to establish purposes for reading." Is
7 that right?

8 A Correct.

9 Q It also indicates that she would benefit from
10 post-reading strategies. Is that right?

11 A Yes, I see that.

12 ~~MR. BENTLEY: Judge, is this witness going~~
13 to be asked to -- to say what the -- what my adversary
14 is going to read? I mean, if that's the purpose the
15 report speaks for itself.

16 MS. REISMAN: Well I --

17 MR. BENTLEY: I'm not sure the premise of
18 the question.

19 MS. REISMAN: I can shorten it.

20 BY MS. REISMAN:

21 Q You testified and -- today that the team
22 focused on the fact that the beginning of that one
23 sentence says that H.M. -- instruction in fifth grade
24 that -- and it goes on. Did the team consider all of
25 the other information?

1 A Yes. I -- I think that was something that stood
2 out to us as a finding that was -- that was reported by
3 this evaluator. We felt that the report was not
4 unimportant or unuseful, but that it could help in --
5 form instruction. We just didn't see the instruction
6 as being special education instruction. We thought --
7 we felt as though that what was being recommended was
8 well within the range which -- which could be provided
9 in a general education classroom.

10 MS. REISMAN: That's all I have.

11 THE COURT: Any redirect?

12 ~~MR. BENTLEY: No. No, Your Honor.~~

13 MS. REISMAN: I -- I'd like to move for the
14 admission of P-21 without the pages after the signature
15 page.

16 MR. BENTLEY: I would object, Your Honor.
17 I believe the -- and having -- should be here to
18 testify to.

19 THE COURT: There's -- there's two things
20 that are of concern to me. One -- one is not a concern
21 and I would usually overrule the objection because if
22 this is a document that was considered by the child
23 study team then it should be part of the record in this
24 matter.

25 MR. BENTLEY: Sure.

1 THE COURT: But it was considered after the
2 fact.

3 MS. REISMAN: It was considered after the
4 fact and they said it's part of their decision. It was
5 considered by their expert. If -- if you want to wait
6 until we have the testimony from our expert to come in
7 and talk about it we can wait until then to move it
8 into --

9 MR. BENTLEY: No, Judge.

10 THE COURT: No, no, no, no. I'm just saying
11 if it was considered by the child study team it should
12 ~~be part of the record and it was considered by the~~
13 child study team, however, in a form which did not
14 include the additional attachments. Is that my
15 understanding?

16 MS. REISMAN: I believe that's correct.

17 THE COURT: All right. So in any event I'm
18 going to accept P-21 in evidence, but we'll disregard
19 these additional attachments unless there's some
20 authentication or some reason why I have to --

21 MS. REISMAN: I -- back and get them --

22 THE COURT: Okay. That's P-21 in evidence.

23 (P-21 received in
24 Evidence.)

25 THE COURT: But now this is an -- this is a

1 document, and I don't know if it's testing those after
2 the fact, but certainly a document that was made known
3 to the child study team after the fact, why -- to be
4 consistent shouldn't I then consider this --

5 MR. BENTLEY: QRI?

6 THE COURT: What's that? QRI, yes.

7 MS. REISMAN: The child study team never --
8 the QRI. The parents -- the parents --

9 THE COURT: Maybe they should.

10 MS. REISMAN: The parents --

11 MR. BENTLEY: I would love for them to
12 consider that, Judge.

13 MS. REISMAN: The parents informed the child
14 study team of the results of this evaluation prior to
15 the eligibility meeting. They just didn't have the
16 final report. The final report was sent to Mr.
17 Rafferty on May 30th and as you can see from the
18 document R-35 moved into evidence by respondents the
19 child study team explicitly received and reviewed the
20 report compared by Ms. Westcott and took that into
21 consideration when affirming its determination. That
22 is not true of the QRI.

23 THE COURT: All right.

24 MS. REISMAN: In addition, the child study
25 team were informed of the results of this report prior

1 to the eligibility meeting -- final report.

2 MR. BENTLEY: I -- I -- I cannot agree to
3 it, Judge. There may be evidence from the other side,
4 but I don't have any record of that ever happening or
5 it being communicated to us.

6 THE COURT: All right. In any event, I've
7 made my ruling as far as P-21.

8 MR. BENTLEY: It's in evidence?

9 THE COURT: It's in evidence. Yes.

10 MR. BENTLEY: And the QRI?

11 THE COURT: Is -- I'm just -- I'm just
12 ~~inquiring why -- if I can consider something after the~~
13 fact here why it can't be true across the board.

14 MS. REISMAN: This was -- this was done --
15 okay. This was done last year. This -- this CRI was
16 done last year. The parents also don't have a copy of
17 the QRI --

18 THE COURT: Okay.

19 MS. REISMAN: -- that they're talking about.

20 THE COURT: That's --

21 MR. BENTLEY: Well, if we can provide the
22 parents a copy of the QRI then --

23 THE COURT: Then I'll -- I'll readdress it.
24 I'll readdress it. But until that's done I'm not going
25 to consider it.

1 MR. BENTLEY: All right.

2 THE COURT: Okay. P-21 in evidence after
3 you remove the portions that are -- were not provided
4 to the child study team. Anything else of Mr.
5 Rafferty?

6 MR. BENTLEY: No, Your Honor.

7 THE COURT: Thank you, sir.

8 THE WITNESS: Thank you.

9 THE COURT: It wasn't that hot of a seat.

10 THE WITNESS: No, it was cold, actually.

11 THE COURT: (Laughing.) All right.

12 ~~Anything further?~~

13 MR. BENTLEY: I don't believe so, Your
14 Honor. This is in -- right.

15 THE COURT: All right. We'll go off the
16 record. Off the record.

17 {Whereupon, the proceedings were adjourned.}

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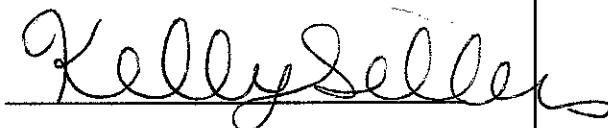
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1 STATE OF NEW JERSEY }

2 COUNTY OF MERCER }

3
4 I, Kelly Sellers, AD/T# 544, assigned
5 transcriber, do hereby affirm that the foregoing is a
6 true and accurate transcript of the proceedings in the
7 matter of R.M. and B.M. o/b/o H.M. v. Haddon Heights
8 Board of Education bearing Docket No. EDS 4902-08,
9 heard on December 8, 2008 before the Office of
10 Administrative Law Court.
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